80-1038

No.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

PUBLIC SERVICE COMMISSION
OF THE STATE OF TENNESSEE, *et al.*,
Petitioners,

v.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, *et al.*,
Respondents.

Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Was respondents' right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution violated simply because respondents' property may have been illegally assessed under Tennessee property tax laws?

2. Was the district court barred by 28 U.S.C. § 1341 from enjoining the certification of respondents' property tax assessments by Tennessee assessing agencies?

PARTIES

1. The petitioners are the Public Service Commission of the State of Tennessee; Honorable Bob Clement, Chairman, Honorable Frank D. Cochran, and Honorable Z. D. Atkins, Members of the Public Service Commission of the State of Tennessee; the State Board of Equalization of the State of Tennessee; Honorable Ray Blanton, Honorable Gentry Crowell, Honorable Harlan Mathews, Honorable Jayne Ann Woods, Honorable David Walker, and Honorable William O. Beach, Members of the State Board of Equalization of the State of Tennessee.

2. The respondents are Louisville and Nashville Railroad Company; Clinchfield Railroad Company; Southern Railway Company; Cincinnati, New Orleans and Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Illinois Central Gulf Railroad Company; South Central Bell Telephone Company; Adamsville Telephone Company; United Inter-Mountain Telephone Company; Tennessee Telephone Company; Concord Telephone Exchange, Inc.; Claiborne Telephone Company; West Tennessee Telephone Company; Crockett Telephone Company, Inc.; Humphreys County Telephone Company; Powell Telephone Company; and Tellico Telephone Company.

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PETITION FOR WRIT OF CERTIORARI

The Attorney General of the State of Tennessee, on behalf of the Public Service Commission of the State of Tennessee, et al., petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit and the opinion of the United States District Court for the Middle District of Tennessee on respondents' complaint are not reported at this time and appear in the Appendix.

JURISDICTION

The judgment of the court below was entered on September 26, 1980. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

1. The Fourteenth Amendment to the United States Constitution.

2. 28 U.S.C. § 1254(1).

3. Article II, Section 28 to the Tennessee Constitution.

4. Tennessee Code Annotated §§ 67-606, 67-838.

STATEMENT OF THE CASE

This record presents a petition for writ of certiorari by petitioners, the Public Service Commission of the State of Tennessee and the members thereof, and the State Board of Equalization of the State of Tennessee and the members thereof, from a decision of the United States Court of Appeals for the Sixth Circuit dated September 26, 1980. The decision of the United States Court of Appeals for the Sixth Circuit involved the consolidation of three separate cases heard by the United States District Court for the Middle District of Tennessee: (1) *Louisville and Nashville Railroad Company, et al.* v. *Public Service Commission of the State of Tennessee, et al.;* (2) *South Central Bell Telephone Company* v. *Public Service Commission of the State of Tennessee, et al.;* and (3) *Adamsville Telephone Company, Inc., et al.* v. *Public Service Commission of the State of Tennessee.*

In each case from orders dated May 2, 1978, as amended orders dated May 17, 1978, May 22, 1978 and May 30, 1978, the United States District Court for the Middle District of Tennessee, the Honorable L. Clure Morton, presiding, enjoined petitioners from certifying valuations or assessments or taking

other valuations or assessments or taking other actions to enforce the 1977 property tax assessments upon properties of respondent railroad companies and telephone companies. Such assessments, however, were permitted to the extent they were in accordance with a state-wide median level of appraisal for locally assessed properties or in accordance with levels based upon each county's average level of appraisal for locally assessed properties. The United States Court of Appeals for the Sixth Circuit on September 26, 1980, affirmed the orders of the United States District Court for the Middle District of Tennessee.

Since the legal issues in each case are identical and the facts are almost identical, the facts in *Louisville and Nashville Railroad Company, et al.* v. *Public Service Commission of the State of Tennessee, et al.* will be presented in lieu of the other two cases.

On April 12, 1978, respondent railroad companies filed suits in the United States District Court for the Middle District of Tennessee based upon jurisdictional grounds under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1332 (diversity of citizenship), seeking injunctive relief enjoining the Public Service Commission and the State Board of Equalization from certifying the 1977 property tax assessments of the railroad companies in accordance with an administrative decision and order of the State Board of Equalization rendered April 12, 1978, wherein the State Board made a final determination of valuation and equalization issues brought to the State Board by the railroad companies with respect to their tentative 1977 assessments set by the Public Service Commission. The railroad companies also sought a declaration that the assessments of their respective properties made by and under the order of the State Board of Equalization were illegal, null and void, and that the State Board of Equalization should be directed to equalize the appraisals of their properties for tax purposes on the basis of a statewide median ratio for locally assessed properties of 63%

as reflected by data used to prepare a Sales Ratio Report. It was contended by the railroad companies that locally assessed properties in Tennessee were for ad valorem tax purposes systematically and intentionally valued at lower percentages of value than the properties of the railroad companies which were centrally appraised for tax purposes by the Public Service Commission using the unit rule of appraisal, and that, therefore, the railroad companies were entitled to have their respective valuations for tax purposes reduced by sufficient amounts in order to equalize their values with the values of locally assessed properties in conformity with the equal protection and commerce clauses of the United States Constitution. The railroad companies alleged in their complaints filed in the District Court that they had no plain, speedy, efficient or adequate remedy at law or in equity in the courts of the State of Tennessee and that they were threatened with great and immediate irreparable harm.

In conjunction with the filing of their complaints, the railroad companies moved for and were granted temporary restraining orders enjoining and restraining the State Board of Equalization and the Public Service Commission from making certifications of assessments with respect to properties and from taking any other action to enforce the taxes imposed under the laws of the State of Tennessee based on the administrative order of the State Board of Equalization dated April 12, 1978.

On April 20, 1978, the State Board and the Public Service Commission answered each of the complaints filed by the railroad companies. In their answers, the State Board and the Commission asserted that the injunctive relief sought by the railroad companies was barred by the Tax Injunction Act, 28 U.S.C. § 1341, alleging that the State remedy for the review of appellees' tax assessments was plain, speedy and efficient. The State Board and the Commission also asserted that the railroad companies did not meet the federal question jurisdictional grounds of 28 U.S.C. § 1331 in that the railroads did not allege that they had been selected for discriminatory tax treatment by

being subjected to taxes not imposed upon others of the same class in contravention of Article II, Section 28 of the Tennessee Constitution which establishes classifications for purposes of property taxation and provides that "the ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State." It was denied by the State Board and the Commission that the Sales Ratio Report referred to in the complaints as suggesting a state-wide overall ratio of assessment to value of approximately 63% for locally assessed properties, and it was similarly denied that such a Sales Ratio Report required the State Board of Equalization in equalizing the valuations of railroad properties to equalize to the median ratio or ratios of locally assessed properties as suggested by the Report.

On April 27, 1978, an order was entered by the District Court consolidating the several railroad company tax cases for trial, and a pre-trial order was entered setting forth the respective theories of the parties and defining the issues. The issues as defined in the pre-trial order were:

1. Does the Tax Injunction Act, 28 U.S.C. § 1341, bar the injunctive relief sought by the railroad companies to enjoin the certification of their 1977 property tax assessments?

2. Have the railroad companies met the federal jurisdictional requirements of 28 U.S.C. § 1331 and 28 U.S.C. § 1332?

3. Have the railroad companies been deprived of equal protection of the law in violation of the Fourteenth Amendment of the United States Constitution by the valuation, assessment and equalization practices of Tennessee state and local taxing authorities?

4. Did the equalization actions of the State Board of Equalization with respect to the properties of the

railroad companies impose an undue burden on interstate commerce or discriminate against interstate commerce?

5. If the plaintiffs are entitled to relief, what relief should be granted?

The consolidated causes were heard in the District Court on the material portions of the administrative record before the State Board of Equalization in the appeals of 1977 railroad ad valorem tax assessments, a stipulation to this effect having been entered into by all parties. This record reflects that respondents are railroad companies duly qualified to do business in the State of Tennessee and have lines in various counties of the State. Petitioners Public Service Commission and State Board of Equalization are State agencies involved in assessing the properties of railroad companies for ad valorem property tax purposes.

In Tennessee, the operating properties of railroad companies and other properties in the "public utility property" classification are centrally assessed by the Public Service Commission using the unit rule of appraisal. T.C.A. §§ 67-901, 67-902. All other properties are locally assessed by local assessors of property.

Under the unit rule of appraisal, the operating properties of railroads are appraised as an operating unit, with the unit including those portions of the railroad system located both inside and outside of Tennessee. An estimate of the unit value is made using three indicators, or approaches to detemine value. These approaches include the cost approach, the income approach and the market approach. The results reached by applying these three approaches are then correlated to arrive at an appraisal of unit value. Once the unit value has been determined, a portion of this unit is allocated to Tennessee based upon several factors as set out by statute (T.C.A. § 67-922). Upon determining the value of the Tennessee portion of the unit, an assessment ratio

of 55% is applied to determine the Tennessee assessment. This assessment, in turn, is apportioned among the local taxing jurisdications of the State for application of their respective tax rates. In making the local apportionment the Tennessee assessment is first divided into distributable properties (situs property), with distributable property being apportioned according to factors such as main line track mileage and localized property being apportioned according to physical situs. T.C.A. §§ 67-925, 67-926.

The railroad companies appeared before the State Board of Equalization and sought reduction in their 1977 ad valorem tax assessments tentatively set by the Public Service Commission. The railroads complained to the State Board of Equalization that the Public Service Commission had valued their operating properties at more than 100% of value and that the appraisals of locally assessed property made by local assessors of property for ad valorem tax purposes were, on the average, less than 100% of value. The railroads sought both valuation and equalization relief.

The railroads appealed to the State Board of Equalization by two separate and distinct procedures. First, petitions were filed by the railroads with county Boards of Equalization in each county where they operate asking that steps be taken by the local Boards to increase the local assessments to the constitutionally mandated percentages of value. When the county Boards of Equalization declined to act favorably upon these petition, the railroads appealed these actions to the State Board of Equalization relying upon T.C.A. § 67-810. Second, the railroads appeared before the Public Service Commission to protest the tentative assessments prepared by the Commission's staff. Evidence relating to the valuations of the railroads was taken before the Commission on August 23, 24, and 25, 1977, and upon denial of any relief by the Commission, the railroads appealed to the State Board of Equalization pursuant to T.C.A. § 67-932. The State Board of Equalization conducted lengthy

hearings with respect to both the valuation question and the equalization question presented by the railroad companies, and upon considering the evidence presented, the State Board of Equalization rendered a decision in which both valuation relief and equalization relief were given to the railroad companies, but not to the degree requested by the railroads. Only equalization has been made an issue in this case.

In the proceedings before the State Board of Equalization on the equalization question, the railroad companies relied upon a sales ratio study and report prepared by the State Division of Property Assessments. This study compared sales prices of locally assessed property during 1976 in all counties of Tennessee to the appraisals indicated by the assessments on county records at the time of such sales. The Sales Ratio Report sets forth an analysis of the sales for each county and shows ten statistical measurements for residential, farm, commercial and industrial properties. (Note: Public utility property centrally assessed by the Public Service Commission was not included in the sales ratio study.) In each instance these statistics were combined into overall measurements of assessment efficiency for each county. The report used the individual county data to develop statewide mean and median ratios in the same format used for the respective counties.

The Sales Ratio Report was based on 27,000 sales which occurred during 1976. The study determined the average ratios and other measurements of appraisals of the various classes of property in each county. The county ratios were compiled into overall state-wide ratios. Two measurements of central tendency to show the average ratios of valuations were calculated in the study — the mean and the median. The mean is the arithmetic average while the median is the middle item or average of position. The Sales Ratio Report shows that the mean and the median ratios for all classes of property (except public utility property, which was not included in the study) in each county of the state were less than 100%.

Witnesses who reviewed the procedures followed by the Division of Property Assessments in the sales ratio study indicated that the procedures were proper and acceptable, and that steps were taken to obtain sales and to compute the ratios by objective means and in a random manner. Although the methodology and the procedures employed in conducting the sales ratio study were statistically acceptable, certain weaknesses in the sales ratio study were revealed as weakening the study for purposes of comparison between the assessment levels of centrally assessed property and locally assessed property. These weaknesses included:

1. The nature of the stratification of the sample, with residential property dominating the sample.

2. The small sample size for commercial and industrial properties.

3. A large standard error of the mean with respect to some counties, particularly Cheatham County.

4. An improper calculation of the overall state-wide mean and median ratios, which were developed from the individual county ratios without using appropriate weighting techniques.

5. The differential impact on inflation between income producing properties and non-income producing properties where market price is used as an indication of value.

6. The high degree of judgment inherent in appraising large complex properties such as railroad properties and a lack of market data with which to test that judgment.

The railroad companies obtained the worksheets used by the Division of Property Assessments in compiling the Sales Ratio Report and experts employed by the railroad companies combined the data into a single frequency distribution with appropriate weighting techniques to calculate a state-wide median. Based on this data, a state-wide median of 62.9% was calculated and testimony indicated that the 95% confidence intervals were from 62.6% and 63.2%.

Based on the testimony of the expert witnesses, the railroad companies asked the State Board of Equalization to reduce their valuations for purposes of assessment to 63% of the full market value of their properties as determined by the State Board. It was suggested by their expert witnesses that steps could be taken by the State Board to allocate such reductions in assessments among the counties on the basis of average ratios indicated by the State's sales ratio study whereby counties with the higher ratios would receive less of an adjustment than counties with the lower ratios.

The State Board of Equalization found that the sales ratio study indicated that the values of locally assessed property are generally less than required by law for property tax purposes, but the State Board determined that the study could not be considered conclusive as to the degree of disparity which existed in each of the respective counties between the valuations of public utility property (including railroad property) and the valuations of locally assessed property for 1977. The State Board also expressed the view that it would be unrealistic and unreasonable to expect a sales ratio study to show that locally assessed properties are valued at a median of 100%, because if a median of 100% were found, it would mean that one half of the locally assessed properties had been unlawfully appraised on the basis of values exceeding market value. Accordingly, the State Board took action to reduce the final assessments of the railroad companies in counties where the median ratios as shown by the Sales Ratio

Report were below the state-wide median of 63%. The State Board directed that adjustments in those counties should be based on the percentage the median shown in the Sales Ratio Report for such counties bears to 63%.

On May 2, 1978, an order was entered by the District Court enjoining the State Board of Equalization and the Public Service Commission from making certifications or taking any other action to enforce the taxes imposed under the laws of the State of Tennessee based on the order of the State Board of Equalization dated April 12, 1978. The Court allowed the State Board to rehear and reconsider the assessments of the railroads' properties for the sole purpose of reducing assessments to 63% of the assessments that would otherwise have been determined based upon property values fixed by the State Board.

A memorandum in support of the May 2, 1978 order was entered by the District Court on May 4, 1978, wherein the Court made findings of fact and conclusions of law. In its memorandum, the District Court found that the 1977 railroad properties had been appraised for tax purposes at 100% of value; that all property in Tennessee, except public utility property which is centrally assessed, is appraised for tax purposes at a median of 63% of value; and that the disparity between the appraisal levels of centrally assessed properties and locally assessed properties has existed over a period of many years and is systematic and intentional. The District Court further found that Article II, Section 28 of the Tennessee Constitution, as amended in 1972 to require classification for property tax purposes, requires that all property must be valued at 100% of the market value, and the failure of the taxing authorities to so value one or more subclasses of property permits those subclasses whose property is appraised at market value to seek and obtain equalization. It was determined by the District Court that the railroad companies had been denied effective equalization by the April 12, 1978 equalization decision and order of the State Board.

With respect to the procedural aspects of the case, the District Court found that it had jurisdiction based on a federal question and that the Court was not restrained by U.S.C. § 1341 from granting the injunctive relief prayed because under the law of Tennessee as it presently exists the railroad companies have no practicial remedy at all.

Because the memorandum of the District Court seemed to allow the State Board of Equalization discretion in reducing and certifying assessments to either the state-wide median ratio of 63% or to levels based on each county's average level of appraisal, and because the order of the Court apparently did not allow such discretion, the State Board and the Commission applied for a supplemental order to clarify the extent of their discretion and attached to their application a proposed supplemental order. A supplemental order was entered on May 22, 1978, which was identical to the proposed supplemental order submitted by the State Board and the Commission except for the word "final" in the second line of paragraph 3 of the supplemental order. Because of the uncertainty attending the word "final" as modifying "certifications" in the supplemental order, the State Board and the Commission moved the District Court to amend the supplemental order be deleting the word "final" from the third paragraph. Their motion to amend the supplemental order was denied on May 26, 1978.

On June 1, 1978, the State Board and the Commission filed their notice of appeal appealing from the order of the District Court entered May 2, 1978, as supplemented by the supplemental order entered May 22, 1978, to the United States Court of Appeals for the Sixth Circuit.

On September 26, 1980, the United States Court of Appeals for the Sixth Circuit affirmed the orders of the District Court. In its opinion, the Court found that the district court was not barred by 28 U.S.C. § 1341 from enjoining the State Board of

Equalization's certification of appellees' assessments for the year 1977. Furthermore, the Court concluded that the principles requiring application of the equal protection clause enunciated in *Louisville and Nashville Railroad Company* v. *Public Service Commission,* 249 F. Supp. 894 (M.D. Tenn. 1966), *aff'd,* 389 F.2d (6th Cir. 1968) were controlling in the present case and the right of respondents to equal protection under the Fourteenth Amendment of the United States Constitution was not affected by the 1972 state constitutional amendments or subsequent state statutes.

REASONS FOR GRANTING THE PETITION

I.

Respondents' Right To Equal Protection Under The Fourteenth Amendment To The United States Constitution Was Not Violated Merely Because Tennessee Property Tax Laws May Have Been Contravened.

The Tennessee Public Service Commission and its predecessor the Tennessee Railroad and Public Utilities Commission have been embroiled with the railroads and telephone companies in Tennessee on the issue of equal protection and property tax assessments for more than forty years. *See Nashville C. and St. L. Ry* v. *Browning,* 310 U.S. 362, 60 S.Ct. 968, 84 L.Ed. 1254 (1940); *Louisville and Nashville Railroad Company* v. *Public Service Commission,* 249 F. Supp. 894 (M.D. Tenn. 1966), *aff'd,* 389 F.2d 247 (6th Cir. 1968); *Louisville & Nashville Railroad Co.* v. *Atkins,* 390 F. Supp. 576 (M.D. Tenn. 1975). All of these cases treat the issue of equal protection in a different manner. A review of these cases and a comparison of them to the present case will show that under the present case there is no violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

In the *Browning* decision, Justice Felix Frankfurter in a unanimous opinion denied the railroad's equal protection claim on the ground that there was insufficient evidence to overturn the Tennessee Supreme Court's finding that the railroads had not overcome the presumption that the State Board of Equalization had equalized assessments in accordance with state law. Although this case arose prior to the classification structure under Article 2, Section 28 for taxing public utilities, commerical property, residential and farm property, placed in the Tennessee Constitution in 1972, Justice Frankfurter proceeded in dicta to consider the railroad's equal protection claim as if the Supreme Court had found that the railroads were classififed differently for tax purposes from the majority of property owners.

The considerations of Justice Frankfurter on this issue are as follows:

> "That the states may classify property for taxation; may set up different modes of assessment, valuation and collection; may tax some kinds of property at higher rates than others; and in making all these differentiations may treat railroads and other utilities with the separateness which their distinctive characteristics and functions in society make appropriate — these are among the commonplaces of taxation and of constitutional law. (Citations omitted) Since, so far as the Federal Constitution is concerned, a state can put railroad property into one pigeonhole and other property into another, the only question relevant for us is whether the state has done so. *If the discrimination of which the Railway complains had been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous. If the state supreme court had construed the requirement of uniformity in the Tennessee Constitution so as to permit recognition of these diversities, no appeal could successfully be made to the Fourteenth Amendment.* Here, according to petitioner's own claim, all the organs of the state are conforming to a practice, systematic, unbroken for more than forty years, and now questioned for the first time. It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which like has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The equal protection clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text." [Emphasis supplied]. (310 U.S. at 368).

Later in the *Browning* opinion, Justice Frankfurter concluded that "such a discrimination, not invidious but long-sanctioned and indeed conventional, would not be offensive to the Fourteenth Amendment simply because Tennessee had reached it by a circuitous road. It is not the Fourteenth Amendment's function to uproot systems of taxation from the state's tradition of fiscal administration and ingrained in the habits of its people." 310 U.S. at 370.

Twenty-seven years after the *Browning* decision, Federal District Court Judge William E. Miller came to the opposite conclusion under almost identical facts in the *Louisville and Nashville Railroad Company* case, *supra.* In reviewing the *Browning* decision, Judge Miller stated:

> "The difficulty with the *Browning* opinion lies in its finding that state law had in fact established different classes of property. It is beyond question that both now [1967] and at the time of the *Browning* decision [1940], the Tennessee Constitution expressly prohibits classification of property at less than its actual cash value." (249 F. Supp. at 899)

Judge Miller's argument for ignoring the *Browning* decision had its foundation in Article 2, Section 28 of the Tennessee and *Carroll* v. *Alsup,* 107 Tenn. 257, 64 S.W. 193 (1901). Prior to 1972, Article 2, Section 28 of the Tennessee Constitution provided in pertinent part that "[a]ll property shall be taxed according to its value, that value to be ascertained in such manner as the Legislature may direct, so that taxes shall be equal and uniform throughout the state." In the *Carroll* case, the Tennessee Supreme Court held that a taxpayer could not complain of his assessment when it is at/below the actual cash value on the grounds that his neighbor's property is assessed less.

Based upon the above-cited case and constitutional provision, the District Court in 1966 in *Louisville and Nashville Railroad Company* reasoned that in Tennessee, there is, for tax purposes,

but one class of property. Since the equal protection clause prohibits unequal treatment within a class (*Sunday Lake Iron Co.* v. *Wakefield Tp.*, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918), the District Court held that the substantially and systematically higher assessment percentages for railroad and utility property, as opposed to other properties, is a violation of the equal protection clause of the Fourteenth Amendment and entitles the railroads to equalization relief. Furthermore, the District Court held that since equalization relief could not be obtained in state court under *Carroll,* such relief could be granted in federal court.

The Sixth Circuit, with a dissenting opinion, affirmed this decision in *Louisville & Nashville Railroad Co.* v. *Public Service Commission,* 389 F.2d 247 (6th Cir. 1968) in effect holding that failure to uniformly assess property as mandated by a state constitutional provision [Art. 2, Section 28] requiring that *all* property be taxed according to its value constituted a denial of equal protection.

Again in 1975, the District Court in *Louisville and Nashville Railroad Company* v. *Atkins,* 390 F. Supp. 576 (M.D. Tenn. 1975) was faced with a challenge by the railroads that the 1972 amendments to Tennessee Constitution Article II, Section 28 which classified property in four classifications with varying assessment ratios violated the equal protection clause of the Fourteenth Amendment. The District Court dismissed the railroads' complaint citing the *Browning* case, *supra,* and holding that states could impose higher rates of property tax on some kinds of property, specifically railroads, than on others.

In 1972, Article 2, Section 28 of the Tennessee Constitution was amended to read *inter alia* as follows:

> "For purposes of taxation, property shall be classified into three classes to wit: Real Property, Tangible Personal Property and Intangible Personal Property.

"Real Property shall be classified into four (4) subclassifications and assessed as follows:

(a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;

(b) Industrial and Commerical Property, to be assessed at forty (40%) percent of its value;

(c) Residential Property, to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commerical property; and

(d) Farm Property, to be assessed at twenty-five (25%) percent of its value.

* * *

"Tangible Personal Property shall be classified into three (3) subclassifications and assessed as follows:

(a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;

(b) Industrial and Commercial Property, to be assessed at thirty (30%) percent of its value; and

(c) All other Tangible Personal Property, to be assessed at five (5%) percent of its value....

"The Legislature shall have power to classify Intangible Personal Property into subclassifications and to establish a ratio of assessment to value in each class or subclass, and shall provide fair and equitable methods of apportionment of the value of same to this State for purposes of taxation....

"The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the

> State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct."

In the present case, the United States Court of Appeals for the Sixth Circuit considered the above-cited constitutional provision and stated that such provision "classifies properties for assessment purposes" and the "the assessment for each classification/subclassification is a percentage of its value." Appendix at pp. A-50-51. The Court then cited the *Louisville and Nashville Railway* case, *supra,* as controlling in the present case and that "this system of discriminatory assessment against the railroads [was] violative of the equal protection clause of the Fourteenth Amendment." Appendix at p. A-51.

In comparing the present case to the previously cited cases, it is clear that under Article 2, Section 28 of the Tennessee Constitution, property is now classified for tax purposes; whereas, prior to 1972 such classification did not exist in the Tennessee Constitution. The main thrust of the argument of the Court of Appeals in the present case is that such classifications concern assessment not value and that "it is the valuation of the properties against which the unequal nonuniformity treatment allegations must be measured." Appendix at p. A-53. From this proposition, the Court of Appeals concludes that it is a violation of the equal protection clause of the Fourteenth Amendment for railroad and other public utility property to be appraised by the Public Service Commission at 100% of its value while all other property was appraised by local assessors at a state-wide median of 63% of its value; therefore, the railroads and other utilities are entitled to equalization relief. This conclusion fails for the following reasons.

Even though "state law" may require equality and uniformity of valuation for all property, i.e. among subclasses, the failure to fulfill such a requirement does not necessarily violate the equal protection clause of the Fourteenth Amendment. Both

the Court of Appeals and respondents will agree that a state may through its Constitution and statutes classify property for tax purposes and assess different classes/subclasses at different percentages of value without violating the equal protection clause of the Fourteenth Amendment. *See Kentucky Railroad Tax Cases,* 115 U.S. 321, 6 S.Ct. 57, 29 L.Ed. 414 (1885); *Pacific Express Company* v. *Seibert,* 142 U.S. 339, 12 S.Ct. 250, 35 L.Ed. 1035 (1892); *Florida Central Railroad Co.* v. *Reynolds,* 183 U.S. 471, 22 S.Ct. 176, 46 L.Ed. 283 (1902); *Southern Ry. Co.* v. *Watts,* 260 U.S. 519, 43 S.Ct. 192, 67 L.Ed. 375 (1923); *Atlantic Coast Line* v. *Daughton,* 262 U.S. 413, 43 S.Ct. 620, 67 L.Ed. 1051 (1923); *Brooklyn and Queens Transit Line Corp.* v. *New York,* 303 U.S. 573, 58 S.Ct. 721, 82 L.Ed. 1024 (1938). From such a proposition, it follows that the practice of appraising these same classes/subclasses at different valuations is not violative of the equal protection clause of the Fourteenth Amendment even though state law may have been contravened by a failure to appraise each classification at its correct value. As noted by Judge McCree in his dissenting opinion in *Louisville & Nashville Railroad* v. *Public Service Commission,* 249 F. Supp. 894 (M.D. Tenn. 1966), *aff'd,* 389 F.2d 247 (6th Cir. 1968):

> "Even if, as appellee contends, the assessment by appellant of appellee's property at a different level of value from the assessment of locally-assessed property violates the law of Tennessee, Snowden v. Hughes, 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497 (1943) establishes that 'state action, even though illegal under state law, can be no more or less constitutional under the Fourteenth Amendment than if it were sanctioned by the state legislature.' 321 U.S. at 11, 64 S.Ct. at 402."
>
> (389 F.2d at 251)

Furthermore, the words of Justice Frankfurter in the *Browning* decision are as appropriate now as they were forty years ago:

> "It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The equal protection clause did not write an empty formalizm into the Constitution. Deeply embedded traditional ways of carrying out state policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text." (310 U.S. at 369).

Although the practice of local assessors appraising property at less than 100% value while the Public Service Commission appraises railroad property at 100% value may technically contravene state statute, nevertheless such a practice does not violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, and; therefore, respondents are not entitled to equalization through the exercise of federal court jurisdiction.

II.

The Injunctive Relief Against The Assessment Of Taxes Granted By The District Court Was Barred By 28 U.S.C. § 1341 Because The State Of Tennessee Has Afforded A Remedy For Judicial Review Of Such Assessments Which Is Plain, Speedy And Efficient.

In the present case, the Court of Appeals affirmed the District Court's holding that injunctive relief against the assessment of taxes granted was not barred by 28 U.S.C. § 1341 because under Tennessee law a plain, speedy and efficient remedy may not be had in the Tennessee courts. The Tax Injunction Act, 28 U.S.C. § 1341, provides that "the district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under any State law where a plain, speedy and efficient remedy may be had in the courts of such State."

In reviewing, the law in Tennessee on this issue, the Court of Appeals stated the following:

> "In Tennessee, the remedy available to a complaining taxpayer premised on allegations of disproportionate assessments or valuations is governed by the State Supreme Court's pronouncements in *Carroll* v. *Alsup, supra,* wherein the court held:
>
> We have, therefore, in the present case a property owner who confesses that his property is assessed at less than its actual value, complaining because, in his opinion, his neighbor's property is assessed at a still [292] lower valuation. It is no ground for relief to him, nor can any taxpayer be heard to complain of his assessment when it is below the actual cash valuation of the property, on the grounds that his neighbor's property is assessed at a less percentage of its true or actual value than his own. When he comes into Court asking relief of his own assessment he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an Equalizing Board, or, perhaps, before the Courts, and show that his neighbor's property is assessed at less than its actual cash value and ask to have it raised to his own, if his is at the cash value, and in this way the Courts, Legislatures and taxpayers will co-operate to tax all property at its actual cash value and to make all taxes equal and uniform, as the Constitution contemplates. 107 Tenn. at 291-92, 64 S.W. at 201-02." (Appendix at pp. A-51-52).

Petitioners maintain that the *Carroll* decision no longer applies in Tennessee for two reasons:

(1) In 1972 the taxation provisions of the Tennessee Constitution (Ar. II, Sec. 28) were substantially rewritten to mandate a comprehensive scheme of classification for property tax purposes. Under Article II, Section 28 of the Tennessee Constitu-

tion, the equalization level required by the Constitution is no longer market value, but the ratio of assessment to market value. Therefore *Carroll* does not bar equalization to levels below market value when it is required to achieve equality and uniformity of ratios of assessment to value. The Court of Appeals stated that "even though the ratio of assessment must be the same within each subclass as mandated by Art. 2, § 28, the valuation of the properties is the figure to be applied, both under the old and new Art. 2, § 28."

The Tennessee Legislature has defined value for property tax purposes generally as market value, directing that such value be ascertained from the evidence of its sound, intrinsic and immediate value for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. T.C.A. § 67-606. However, the equalization level required by the state constitutional provisions is not the market value level but rather is the ratio of assessment to market value. Accordingly, these constitutional provisions, unlike the former constitutional provisions, impose no barrier which would prohibit equalization of values to levels below market value where required to achieve equality and uniformity of the ratios of assessment to value.

(2) In 1973, Tennessee enacted to Property Assessment and Classification Act, (1973 Tenn. Pub. Acts Ch. 226) which substantially amended the existing sections of the Tennessee Code pertaining to property assessment and taxation. Under this new law, there is no value standard for equalization as was the case in the old law. Such a lack of standard would appear to impose no bar to equalization actions below market value so long as such equalizations are appropriate to meet the ratio equality requirements of Article II, Section 28.

In response to this argument, the Court of Appeals compared the old and new tax assessment statutes and found "no material

or significant change in the law with respect to the application of the equal protection clause of the Fourteenth Amendment." Appendix at p. A-55.

Prior to 1973, the State Board of Equalization was required by T.C.A. § 67-822 (repealed) to "reduce or increase, values of property so that the values of all assessments when so equalized shall conform to said standard of actual cash value." T.C.A. § 67-838 now provides that "[e]qualization may be made by said board or commission as the case may be by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof, in such manner as is determined by the state board of equalization will enable said board or commission to justly and equitably equalize assessments in accordance with law." Unlike the former provisions of T.C.A. § 67-822, T.C.A. § 838 does not contain a value standard to which equalization must conform. The equalization standard of T.C.A. § 67-838 only required that equalization be accomplished "in accordance with law." Tennessee law, as contained in Article II, Section 28 of the Tennessee Constitution, as amended, requires equality in the ratio of assessment to value. Therefore, T.C.A. § 67-838 would appear to impose no bar to equalization actions which have the effect of lowering appraised values below market value where such equalizations are appropriate to meet the ratio equality requirements of Article II, Section 28.

The cumulative effect of the abovementioned changes in Tennessee law is that the holding of *Carroll* v. *Alsup* no longer imposes a bar to equalization relief of an individual taxpayer who seeks to have his own tax appraisal equalized below the level of market value where the properties of other taxpayers are assessed based on appraisals lower than his own.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that the judgment of the United States District Court for the Middle District of Tennessee, as contained in orders dated May 2, 1978 and May 17, 1978, amended by orders dated May 22, 1978 and May 30, 1978, as affirmed by the United States Court of Appeals for the Sixth Circuit on September 26, 1980, should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A

ORDER

(Entered May 2, 1978)

In accordance with the memorandum to be forthwith filed. it is hereby ORDERED that:

1. The Tennessee State Board of Equalization be enjoined from certifying to the Public Service Commission the valuation fixed by it upon the plaintiffs' properties for the year 1977 and that the Tennessee Public Service Commission, its members, officers, agents, employees, servants, and attorneys be enjoined and restrained from certifying to the counties and municipalities in Tennessee the amount of the 1977 assessments of plaintiffs' properties to be taxed in such counties and municipalities and that the above-captioned defendants be enjoined and restrained from taking any other action to enforce the taxes imposed under the laws of the State of Tennessee based on the order of the State Board of Equalization of Tennessee dated the 12th day of April, 1978.

2. This injunction be without prejudice to the right of the Tennessee State Board of Equalization to rehear and reconsider the assessments of plaintiffs' properties for the sole purpose of a reduction to 63% of the assessments that would otherwise have been determined based upon plaintiffs' property values fixed by said Board.

3. Pending such redetermination by the Tennessee State Board of Equalization, this case be retained on the active docket of this court, with any party having the right to apply to the court at any time for other and additional relief.

/s/ L. CLURE MORTON
Chief Judge

APPENDIX B

SUPPLEMENTAL ORDER

(Entered May 22, 1978)

In accordance with the memorandum of the Court filed May 4, 1978, it is hereby ORDERED that this Order supplement and amend the Order of the Court dated May 2, 1978, as follows:

1. The Tennessee State Board of Equalization be enjoined from certifying to the Public Service Commission the valuation fixed by it upon the plaintiffs' properties for the year 1977 and that the Tennessee Public Service Commission, its members, officers, agents, employees, servants, and attorneys, be enjoined and restrained from certifying to the counties and municipalities in Tennessee the amount of the 1977 assessments of plaintiffs' properties to be taxed in such counties and municipalities based upon the Order of the Tennessee State Board of Equalization dated the 12th day of April, 1978, and that the above captioned defendants be enjoined and restrained from taking any other action to enforce the taxes imposed upon plaintiffs under the laws of the State of Tennessee based on the Order of the State Board of Equalization dated the 12th day of April, 1978.

2. This injunction be without prejudice to the right of the Tennessee State Board of Equalization to rehear and reconsider the assessments of plaintiffs' properties for the sole purpose of a reduction of the assessments that would otherwise have been determined based upon plaintiffs' property values fixed by said Board to a level based upon the 63% state-wide median level of appraisal, or, in the judgment of the said Board, to levels based upon each county's average level of appraisal.

3. This injunction be without prejudice to the right of the defendants to make such final certifications as are necessary to certify to the various counties and municipalities in Tennessee the 1977 assessments of plaintiffs' properties as reduced in accordance with Paragraph 2 hereof; provided, however, defendants be enjoined and restrained from certifying any 1977 assessments of plaintiffs' properties above the assessment levels determined in accordance with Paragraph 2 hereof.

4. Pending such redeterminations and certifications by defendants, this case be retained on the active docket of this Court, with any party having the right to apply to the Court at any time for other and additional relief.

/s/ L. CLURE MORTON
Chief Judge

APPENDIX C

MEMORANDUM

(Entered May 4, 1978)

The six plaintiff railroad companies each filed separate suits in this court against the Public Service Commission of Tennessee ("Commission") and the individual members thereof and against the State Board of Equalization of Tennessee ("State Board") and its individual members, seeking to enjoin the State Board from certifying to the Commission the valuation fixed by it upon the plaintiff's property for the year 1977, and seeking to restrain and enjoin the Commission from certifying to the counties and municipalities in Tennessee the amount of the 1977 assessment of the plaintiff's property to be taxed in such counties and municipalities or from taking any other action to enforce the taxes imposed under the laws of the State of Tennessee based on the order of the State Board.

The complaint filed by each plaintiff further sought an order declaring such assessments to be illegal, null and void, and to have the court either fix the amount of the assessed value of the plaintiff's property or to remand the cause to the State Board with instructions to equalize the appraisal of each plaintiff's property to the state-wide average of appraised value of locally assessed property. The complaints filed by plaintiffs are identical except for the name of plaintiff and the amount of the valuation found as to each. The answers of the defendants are likewise identical. Upon application of plaintiffs, the court issued a temporary restraining order in each of the cases on April 13, 1978, enjoining and restraining both defendants from certifying the value fixed by the State Board upon the plaintiff's properties for the year 1977, and set the cause for hearing on application for a permanent injunction, as well as for final determination, on April 21, 1978, later changed by the court to April 22, 1978. All the cases were consolidated for trial.

No oral testimony was introduced at the trial; instead, the parties by stipulation introduced a substantial portion of the transcript of the proceedings before the State Board. It appears from the record thus introduced that only one consolidated hearing was held before the State Board.

From the record in these consolidated cases the court finds that each of the plaintiffs has been assessed on both its operating and nonoperating properties based upon a valuation of 100% of market value. This finding of fact was agreed to at the bar of this court by counsel representing the defendant State Board in this cause.

It further appears to the court through the Real Estate Appraisal Sales Ratio Report ("Sales Ratio Report") Prepared and published by the Division of Property Assessments, an agency of the State of Tennessee, and the underlying data, that the state-wide median of appraisal of locally assessed properties[1] is 62.9% of value. It further appears from the evidence introduced in the record by expert testimony that there was only a five percent chance that the median level of appraisal of locally assessed property in Tennessee would vary more than 3/10 or 1% from the 62.9% median as found from the Sales Ratio Report. In other words, the chances were 95 out of 100 that the median level of appraisal of residential, farm, commercial, and industrial properties would not be less than 62.6% nor more than 63.2%. It further appeared that there was only one chance out of a million that such median would be higher than 65.7%.[2] In its order, which these actions seek to review, the

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[1] All taxable property in the State of Tennessee is assessed for tax purposes at the local level except for public utility properties which are assessed centrally by the Commission.

[2] The Sales Ratio Report is a form of technical study sometimes referred to in the property tax administration field as an "assessment to sales ratio study." Assessment to sales ratio studies are generally and widely used for the purpose of testing the level of assessment or appraisal for assessment purposes of locally assessed property. The ratio of market value to assessed or appraised value of property is determined by examining the affidavit of value or deed stamps on a recorded deed and comparing that value to the tax assessor's appraised value for ad valorem tax purposes. Individual transactions are then edited to exclude transfers which do not appear to be at arm's length, such as transfers between family members, related corporations, and the like. Those ratios surviving the editing or verification process are then used to calculate average levels of assessment or levels of appraisal for assessment purposes.

Plaintiffs offered evidence before the State Board to corroborate the validity of the Tennessee sales ratio study. James Gordon Primm, Supervisor of Field Assessments, described procedures followed in

State Board discussed the validity of sales ratio studies generally, and this Sales Ratio Report in particular, in the following language:

> Sales ratio studies are recognized as a method to obtain evidence of levels of values. If properly conducted, the sales ratio method has objectivity, efficiency and standardization. Data in such studies are matters of public record and can be checked and inspected. Tax administrators, courts, commissions and academicians have generally accepted the use of such studies for equalization purposes. . . .
>
> Witnesses who reviewed the procedures and instructions given to the employees who collected the data indicated that they were proper and acceptable. It appears that adequate steps were taken to obtain sales and compute the ratios by objective means and in a random manner.

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compiling the Sales Ratio Report. Mr. Primm's testimony was followed by a review and analysis of the Sales Ratio Report and underlying data by witnesses who qualified as experts in the field of preparing and evaluating assessment to sales ratio studies. One of the two expert witnesses testifying for the plaintiffs was Rolf A. Weil, Ph.D., President of Roosevelt University in Chicago, Illinois, an economist whose academic specialty is state and local finance. He has had extensive experience in conducting assessment to sales ratio studies, both as Director of the Property Tax Division, Illinois Department of Revenue and as a private consultant. Dr. Weil reviewed the procedures followed by Mr. Primm and his staff in compiling the Sales Ratio Report and reviewed the report itself. He testified that in his opinion, the Sales Ratio Report was prepared in accordance with generally accepted practices; and that in his opinion the result of the Sales Ratio Report is adequate for property tax equalization purposes.

The other expert witness testifying for the plaintiffs was Frederick A. Ekeblad, who also holds a Ph.D. in economics. Dr. Ekeblad's specialty is statistics. He served for a number of years as Chairman of the General Economics Department, School of Business Administration, Northwestern University, and was later Dean of the College of Business Administration at the University of Bridgeport. He has had extensive experience in preparing statistical summaries and con-

Having thus commented upon the validity of the Sales Ratio Report in question, the State Board concluded that while the report could not be considered conclusive as to the degree of the disparity that existed in the respective counties between the appraisal of public utility property and the appraisal of locally assessed property, it was the "best information available" to the State Board. The Board further noted that:

> No doubt the median is the appropriate measure of central tendency to be used in comparing valuations and assessments of property. This measurement is not distorted by extremely high or low valuations and seems to be widely recognized as the appropriate measure to determine "average" valuations and assessments for ad valorem tax purposes.

The State Board, therefore, found the average level of appraisal of locally assessed property for tax purposes to be 63%.[3] Based upon all the foregoing, the court accepts this finding and makes its own finding that all property in the State of Tennessee, other than public utility property which is centrally assessed, is appraised for tax purposes at a median or "average" of 63% of value.

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fidence limit calculations from data collected for assessment to sales ratio studies. Dr. Ekeblad took all of the underlying data used in preparing the Sales Ratio Report which had been compiled on a county by county basis and arrayed the data on a statewide basis to calculate the statewide median level of apprasial of locally assessed property weighted by class of property and parcel count. He found the median level of appraisal of locally assessed property to be 62.9%. By application of standard statistical procedures to the result, he determined the 95% confidence limits to be 62.6% on the low side and 63.2% on the high side. He further determined that there was only one chance out of a million that the statewide median would be higher than 65.7%

[3] The action taken by the State Board as a result of this conclusion, while ostensibly "relief" for plaintiffs, is in fact mere tokenism designed to forestall meaningful relief and thus to perpetuate rather than remedy plaintiffs' unequal burden of taxation. After stating that the sales ratio study "is the best information available to the

Plaintiffs next insist that the appraisal of their properties at 100% of value and the appraisal of all other properties at substantially less than 100% has existed over a period of many years and is systematic and intentional. The court finds that this insistence is sustained by the evidence. Such allegations have been sustained by the courts over a period of years. Judge William E. Miller, in the case of **Louisville & Nashville Railroad v. Public Service Commission,** 249 F.Supp. 894 (M.D. Tenn. 1966), **aff'd** 389 F.2d 247 (6th Cir. 1968), found that at that time railroad property was being assessed at not less than 55% to 65% of actual value, whereas the state-wide average of locally assessed property was not more than 30% of its cash value. Again, in the year 1966, the Court of Appeals for the State of Tennessee found in the case of **Southern Railway v. Clement,** 57 Tenn. App. 54, 415 S.W.2d 146 (1966), **cert. den.** (1967), that the railroad there involved was

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Board at this time upon which to take appropriate action," the Board concluded that:

> Therefore, . . . for 1977 the final valuations of railroads subject to these appeals shall be reduced **in counties where the median ratios are below 63.**
>
> It should be observed that after the sales ratio study was conducted, reappraisal programs were completed in the counties of Hawkins, Sevier and Williamson. The revised values for locally assessed properties resulting from the reappraisal program in these counties were used as the basis for assessments for 1977; therefore, the ratios shown in the sales ratio study are invalid for these counties, and no adjustment is required for these counties.
>
> The Board recognizes that reappraisal programs are being completed in about ten counties for 1978, and that approximately twenty additional counties have entered into contracts with the Division of Property Assessments to carry out and update reappraisal programs in the immediate future. The Board compliments the efforts which have been initiated by local officials of these counties and encourages similar steps to be taken in other counties. The State Division of Property Assessments will assist any county in carrying out such steps as may be required.

(Emphasis added.) The order of the State Board is set out in Appendix A to this opinion.

assessed at at least 60% of its actual value and probably at 100% of value, but that the locally assessed property in at least two counties, Hawkins and Loudon, were assessed at only 9% to 11% of value. (It is interesting to note that while the State Court of Appeals in **Southern Railway** directed all future assessments in Loudon and Hawkins Counties to be based upon 100% of value, the recent Sales Ratio Report shows a median level of appraisal for Loudon County of only 45% of value and for Hawkins County of only 34%.)

Further, the record before the State Board reflects that the differential in the valuation of locally assessed properties and the valuation of railroad properties remains systematic and intentional despite what would appear to be a major development in State law.

Largely as a result of the decisions in **Louisville & Nashville Railroad v. Public Service Commission,** *supra*, and **Southern Railway v. Clement,** *supra*, article II, section 28 of the Tennessee Constitution was amended in 1973. This amendment, commonly known as the Question 3 amendment was discussed by the Tennessee Supreme Court in **Snow v. City of Memphis,** 527 S.W.2d 55 (1975). The court noted that "in its pre-amendment status article II, section 28 provided no basis for the assessment of any species of property at less than its actual cash value," and that the "purpose and objective of the Question 3 amendment is to tax income-producing property at a higher rate than owner-occupied residences and farms." *Id.* at 66. Article II, section 28 as amended provides:

> Real property shall be classified into four (4) subclassifications and addressed as follows:
>
> (a) Public Utility Property, to be assessed at fifty-five (55%) per cent of its value:
>
> (b) Industrial and Commercial Property, to be assessed at forty (40%) per cent of its value;

(c) Residential Property, to be assessed at twenty-five (25%) per cent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and

(d) Farm Property, to be assessed at twenty-five (25%) per cent of its value.

In holding the classification scheme of this provision to be "constitutionally permissible . . . beyond question" the **Snow** court stated with what this court regards as undue optimism, that:

> The constitutional and statutory scheme that has resulted from the Question 3 amendment has brought about a state of uniformity and equality of assessment of real property in Tennessee that while not perfect can conservatively be described as vastly superior to its predecessor system in approaching **the objective of equality and uniformity throughout the state within the classifications provided.** Perfection in the taxation of real property is neither required nor attainable.

527 S.W.2d at 66 (emphasis added). While the goal of equality within the four classifications is a laudable one, it does not fully serve the equal protection clause of the fourteenth amendment to the Constitution of the United States, which requires that the unequal treatment of the four classifications be limited to the application of the unequal percentages provided in the amendment. The **value** to which these percentages are to be applied may not also be unevenly determined from one classification to another. The court agrees with plaintiffs that:

> The effect of the order of the Board of Equalization is to amend the Constitution of the State of Tennessee to require that public utility property be assessed at 55% [of 100%] of its value, industrial and commercial property to be assessed at 40% **of 63%** of its value, residential

> property to be assessed at 25% **of 63%** of its value and farm property assessed at 25% **of 63%** of its value.

Plaintiff Louisville & Nashville Railroad's **Memorandum Brief,** filed April 12, 1978, at 2 (emphasis added).

Thus it appears that the Question 3 amendment of article II, section 28, has done little to alter the pattern of differential treatment of which plaintiffs complain. Indeed, the new scheme may have hampered rather than facilitated true reform. At least two representatives of the taxing authorities in the various counties testified that they were not attempting to appraise properties assessed by them at 100% of value. In addition the record reflects that the State Board, during the hearing to determine railroad valuation for the year 1976, concluded that the counties were not appraising locally assessed properties at 100% of value and called upon the counties to correct this inequality. William R. Snodgrass, State Comptroller of the Treasury and a member of the State Board, stated at the hearing on April 11, 1978, that something has to be done to induce the counties to do what the law requires of them and noted that counties which do not attempt to comply with the law benefit because the low level of appraisal requires higher tax rates applicable to utility values:

> Somehow we've got to do something that makes it desirable for counties to do what the law requires of them to do. . . . In the past those who don't make the effort gain. Those who do make the effort are penalized, because what they do by having a low level of assessment, they have a high tax rate, and that applies to utility values. Those that make the change and try to update voluntarily automatically lose in the situation as it relates to the local taxpayers as it relates to the utilities.
>
> That being the case, we have been continuing a situation that makes it politically difficult for the local officials and in fact it makes it evidently almost impossible.

In an effort to cause appraisals to be increased, the State Board ordered a reduction in the assessment of railroad properties, but only in those counties that were appraising locally assessed properties below the 63% state-wide median, and then, only to the extent that the appraisal of locally assessed properties fell below the state-wide median. (See footnote 3, *supra*, and Appendix A, *infra*.) The State Board apparently concluded that such inequalities would continue into the future since it indicated that for the year 1978 it would require counties to bring local appraisals up to 70% of value. The court, therefore, reaches the inescapable conclusion that the action of the various counties in appraising locally assessed properties at a substantially lesser percentage of value that the value placed upon railroad property is both systematic and intentional.

Based upon the allegations of their respective complaints, to the extent that they are sustained by the foregoing findings of fact, plaintiffs insist that they are entitled to have the appraisal of their properties equalized with the appraisal of all other properties in Tennessee. To the merits of the case, counsel for the State Board raises essentially three defenses. First, while he admits that locally assessed nonutility property is not generally appraised at market value, he denies that this is the result of a systematic and intentional practice. This has hereinabove been determined adversely to counsel's position. Second, it is urged that while the Sales Ratio Report and the expert testimony show that locally assessed property is appraised at only 63% of value, the Report is not conclusive evidence of such fact. While perhaps not conclusive, it is strong and convincing evidence of that fact, and there being no substantial evidence to the contrary, it must be and is accepted by the court just as it was accepted by the State Board.

Finally, counsel for the State Board argues that since under article II, section 28 of the Constitution of Tennessee, as amended in 1972, all property is now classified into four (4) sub-

classifications, the only equalization to which a taxpayer is entitled is to be equalized with other property falling into the same subclassification. As indicated earlier in this opinion, the court finds no merit in this contention. It is clear that the amendment to article II, section 28 was not intended to change the single standard of value for all property. The court cannot seriously entertain the thought that the people of Tennessee, through the constitution, could have intended the inequitable and discriminatory result which the State urges. The court, therefore, finds that all property must be valued under the Constitution of the State of Tennessee at 100% of market value, and the failure of the taxing authorities to so value one or more subclasses permits those subclasses whose property is appraised at market value to seek and obtain equalization.

While courts are not bound by the interpretation placed upon constitutional provisions by legislatures or boards and commissions, the court does note that its construction of article II, section 28 of the Constitution of Tennessee, is consistent with the construction placed thereon by the Legislature of the State. For example, T.C.A. § 67-606 provides that

> The value of **all** property shall be ascertained from the evidence of its sound, intrinsic and immediate value. . .
>
> . . . .
>
> It is the legislative intent hereby declared that . . . all property of every kind shall be appraised according to its sound, intrinsic and immediate value. . . .

(Emphasis added.)

T.C.A. § 67-806 provides:

> **Any** owner of property liable for taxation in the State shall have the right . . . to make complaint before the county board of equalization on one or more of the following grounds: . . . (3) **Property other than property owned by**

> **the taxpayer** has been assessed on the basis of appraised values which are less than the basis of value provided for in Section 67-606.

(Emphasis added.)

The quoted language is wholly inconsistent with the notion that equalization is permitted only within a particular subclass. Further, the State Board in the very order the court is called upon to review in these cases, stated: "On the other hand, the Board cannot allow the valuations of locally assessed property to continue to deteriorate from current values without any steps being taken to improve this situation. **A reasonable effort must be made to maintain fair valuations for the assessments of all property."** (Emphasis added.) Thus, both the Tennessee State Legislature and the State Board have in effect found that equalization is required among all classifications of property.

In view of the foregoing findings, it becomes obvious that plaintiffs are entitled to equalization relief. The question next presented is whether or not this court has jurisdiction to grant the relief prayed. Plaintiffs invoke the jurisdiction of this court upon diversity of citizenship, the commerce clause of the Constitution of the United States and the equal protection clause of the fourteenth amendment. For the reasons set forth hereinafter, jurisdiction based upon a federal question is proper and plaintiffs are entitled to prevail on their claims for equal protection of the laws. It is not necessary, therefore, to address the commerce clause question raised by plaintiffs nor to decide whether jurisdiction based upon diversity of citizenship would be proper.

Since plaintiffs have been denied effective equalization, they are entitled to invoke federal jurisdiction under the equal protection clause of the fourteenth amendment, as held by Judge Miller in **Louisville & Nashville,** *supra*, and as further held by

the Supreme Court of the United States in a number of cases including **Hillsborough Township v. Cromwell,** 326 U.S. 620, 66 S.Ct. 445, 90 L. Ed. 358 (1946); **Sioux City Bridge Co. v. Dakota County,** 260 U.S. 441, 43 S.Ct. 190, 67 L. Ed. 340 (1923); **Sunday Lake Iron Co. v. Township of Wakefield,** 247 U.S. 350, 38 S.Ct. 495, 62 L. Ed. 1154 (1918).

It therefore appears that this court has jurisdiction to grant the relief prayed unless it is restrained from doing so by 28 U.S.C. § 1341, which provides that "The district court shall not enjoin, suspend, or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy may be had in the courts of such state." Thus the question presented to the court is whether or not under the laws of the State of Tennessee a plain, speedy and efficient remedy is available to plaintiffs in these consolidated cases. Judicial interpretations of 28 U.S.C. § 1341 are summarized in **Garrett v. Bamford,** 538 F.2d 63 (3rd Cir. 1976):

> Supreme Court decisions construing this statutory language offer two essential points of guidance. First, although it can be argued that Congress meant to establish a more stringent standard for federal intervention, the decisions indicate that "plain, speedy and efficient" means no more than the prior equity standard of "adequacy." Second, it is sufficient for a finding of inadequacy that the availability of the state remedy be merely uncertain. **Hart and Wechsler,** *supra* note 5, at 979. **Spector Motor Service, Inc. v. O'Connor,** 340 U.S. 603, 605, 71 S. Ct. 508, 95 L. Ed. 573 (1951); **Township of Hillsborough v. Cromwell,** 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946); **Spector Motor Service, Inc. v. McLaughlin,** 323 U.S. 101, 65 S. Ct. 152, 89 L. Ed. 101 (1944).

Id. at 67.

In 1901 the Supreme Court of Tennessee had before it the case of **Carroll v. Alsup,** 107 Tenn. 257, 64 S.W. 193, in which

case the plaintiff insisted that his property was worth $12,000.00, that he had been assessed on a value of $10,500.00, and that this represented a considerably higher percentage of value than the assessed value of other property owners. He insisted that under equalization he was entitled to have his assessment reduced to $7,200.00, in order to put his property on an "equal and uniform basis and parity with other property in Shelby County." In rejecting Mr. Carroll's contention, the Supreme Court stated that

> It is the evident policy and object of the law, in cases of unequal assessments, not to reduce the assessments upon the property unless it has been assessed beyond its actual value, but, instead, to raise up to that valuation all property that has been inadequately assessed, and thus to equalize taxation on all property. The recourse offered to the taxpayer is not to reduce his own assessment, unless it is beyond its cash actual value, but to have that of his neighbor increased until both reach the point of actual cash value and thus become equal and uniform, as the law provides and the Constitution contemplates.

Id. at 284, 64 S.W. at 200. The court further held that

> It is no ground for relief to him, nor can any taxpayer be heard to complain of his assessment when it is below the actual cash valuation of the property, on the grounds that his neighbor's property is assessed at a less percentage of its true or actual value than his own. When he comes into Court asking relief of his own assessment he must be able to allege and show that his property is assessed at more than its actual cash value.

Id. at 292, 64 S.W. at 202.

In 1964 the Supreme Court of the United States had before it for consideration the case of **Hillsborough Township v. Cromwell,** *supra.* There, plaintiff insisted that other properties were assessed at a smaller percentage of value than his, and that

therefore he was entitled to relief under the equal protection clause of the Constitution of the United States. The courts of New Jersey at that time followed a rule similar to **Carroll v. Alsup.** The United States Supreme Court, in granting the relief prayed and in finding that the taxpayer had no plain, speedy and efficient remedy at state law, declared that, "The constitutional requirement [Equal Protection], however, is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burdent of seeking an upward revision of the taxes of other members of the class." 326 U.S. at 623.

Despite the opinion of the Supreme Court in **Hillsborough,** decided in 1946, the Supreme Court of Tennessee subsequently reaffirmed the rule set out in **Carroll v. Alsup** in the case of **McCord v. Nashville, Chattanooga & St. Louis Railway,** 187 Tenn. 277, 213 S.W.2d 196 (1948), again holding that a taxpayer could not through equalization ask to have his assessment reduced. His only remedy was to "come before an equalization board, or perhaps before the courts, and show that his neighbor's property is assessed at less than it actual value, and ask to have it raised to his own, if his is at the cash value. . . ." *Id.* at 292, 213 S.W.2d at 203. Thereafter, the Supreme Court of Tennessee continued to reaffirm **Carroll v. Alsup** on each occasion that the issue was presented. **Mayor of Morristown v. Burke,** 207 Tenn. 180, 338 S.W.2d 593 (1953); **Biltmore Hotel Court v. City of Berry Hill,** 216 Tenn. 63, 390 S.W.2d 23 (1964). This being the status of the law in Tennessee at the time the case of **Louisville & Nashville,** *supra*, was presented to Judge Miller, he found that the railroad had no plain, speedy and efficient remedy under the state law and that, therefore, he was required to enjoin the assessment of the railroad's property by the State Board, stating that:

> As we have seen, that is still the law in Tennessee, and since there is no plain, speedy, and efficient remedy in Tennessee to correct the intentional and systematic viola-

> tions of either its own law or of the Fourteenth Amendment, federal declaratory and injunctive relief is not only proper but necessary for the protection of plaintiff's constitutional rights. The defendants' abstention argument has been considered by the Court. But in view of the settled state rule, the Court is persuaded that any appeal to the state courts would be in vain.

249 F.Supp. at 904. Judge Miller's action in granting the relief prayed for was affirmed by the Sixth Circuit at 389 F.2d 247.

Therefore, unless there has been some change in the law of the State of Tennessee since the opinion of Judge Miller rendered in 1966, the plaintiffs are entitled to the relief that they seek herein. Then Tennessee Supreme Court has apparently not been called upon to review its holding in **Carroll v. Alsup** since Judge Miller's opinion. The Tennessee Court of Appeals discussed **Carroll v. Alsup** in **Southern Railway v. Clement,** 57 Tenn. App. 54, 415 S.W.2d 146 (1966), **cert. denied** (1967) There, Southern Railway Company sought to apply the **Carroll v. Alsup** rule so as to require the local assessments in Hawkins and Loudon counties to be increased to actual cash value. While the plaintiff in **Southern Railway** made no effort to overturn the rule in **Carroll v. Alsup,** the Court reaffirmed and followed that rule in ordering that assessments of undervalued property be increased.

The United States District Court for the Western District of Tennessee considered the present status of the law of Tennessee in the case of **Southland Mall, Inc. v. Garner,** 392 F. Supp. 1370 (1968), and concluded that **Carroll v. Alsup** was still the law in Tennessee. The Court stated at page 1374:

> At the outset, it should be pointed out that a Tennessee taxpayer can, through the procedure above summarized, seek to have his county assessment reduced to actual value; but to the extent that his complaint is that his property is

> assessed at a greater percentage of actual value than is other property of the same class, his only remedy is to seek to have the assessment of the other property increased.

While this opinion involved an interlocutory order and was not appealed, the final decision in **Southland Mall, Inc.** was appealed to the Sixth Circuit. In affirming the action taken by Judge Brown, Judge Celebreeze stated:

> In light of the pending state action we have considered the propriety of federal abstention in this present matter. A review of the questions presented in each action and of the remedies available to Appellant in this type of state proceeding convinces us that there is no possibility that any decision in the state court could eliminate the need for facing the constitutional question presented here. See Hillsborough v. Cromwell, 326 U.S. 620, 623, 66 S. Ct. 445, 90 L.Ed. 358 (1946); Louisville & Nashville Railroad Co. v. Public Service Comm. of Tennessee, 249 F.Supp. 894, 903-904 (M.D. Tenn. 1966) aff'd 389 F.2d 247 (6th Cir. 1968). Accordingly, we believe abstention would be inappropriate in this case.

Southland Mall, Inc. v. Garner, 455 F.2d 887, 888 n.1 (6th Cir. 1972). It appears, therefore, that there has been no change in decisional law of Tennessee since Judge Miller's opinion in 1966.

Counsel for the State Board has argued that statutory provisions governing the administrative review of property tax assessments in Tennessee have changed since the time of the decision in the **Louisville & Nashville** case and have greatly expanded the power of the State Board to equalize assessments. Counsel would have this court conclude that these statutory changes have in some manner altered and overruled the holding of the Tennessee Supreme Court in **Carroll v. Alsup.** However, a thorough comparison of the statutory provisions governing the powers and duties of the State Board as they existed at the

time of **Louisville & Nashville** with the statutory provisions governing the powers and duties of the State Board today reveals no substantive changes in the law.

The Tennessee Code as it existed at the time of **Louisville & Nashville** (the applicable portions of which statutes are set out in Appendix B to this opinion) granted the State Board jurisdiction over the assessment of all properties in the state and imposed upon the State Board the duty to equalize assessments. T.C.A. § 67-823. State Board members were required by T.C.A. § 67-207 to "equalize, fix, and compute the values of properties within their jurisdiction, so that the value thereof [will] conform to the standard of the actual cash value of the same." Any taxpayer, or "owner of property liable for taxation in the state," was authorized by T.C.A. § 67-804 to "make complaint before the county board of equalization that other property or properties in the county [were] assessed at less than the actual cash value thereof or at a less percentage of value than complainant's own property." An aggrieved taxpayer was further entitled by T.C.A. § 67-821 to a hearing and determination by the State Board "of any complaint he may make on the ground that other property than his own [was] assessed at less than the actual cash value thereof, or at a less percentage of value than his own property or other property or that his own property [was] assessed at more than its actual cash value. . . ." The State Board was empowered by T.C.A. § 67-822 to equalize assessments of property "by reducing or increasing, the values thereof, by classification of property, or by wards, civil districts or counties or in such manner as will enable the board to justly and equitably equalize assessments in conformity with [the standard of actual cash value]." With regard to the assessment of utilities and carriers, T.C.A. § 67-928 empowered the State Board "to increase or diminish the valuation placed upon any property valued by [the railroad and public utilities commission]." Under T.C.A. § 67-929, any railroad or public

utility that was aggrieved by the certified assessment of the State Board and that successfully challenged the assessment in the state or federal courts would be entitled to a refund or credit after payment of its taxes under protest. The action of the State Board in certifying assessments was considered final action for purposes of judicial review. T.C.A. § 67-823. Judicial review was controlled by T.C.A. § 27-801.

Under present statutes (set out in Appendix C to this opinion), the State Board is empowered to take "whatever steps it deems are necessary to effect the equalization of assessments, in any taxing jurisdiction within the state in accordance with the laws of the state. . . ." T.C.A. § 67-831. Any taxpayer, or "owner of property liable for taxation in the state," is authorized by T.C.A. § 67-806 to make "complaint before the county board of equalization" on the ground that his property has been erroneously classified, or that his property has been asessed on the basis of an appraised value in excess of market value, or that property other than his own has been assessed on the basis of appraised values that are less than market value. An aggrieved taxpayer is further entitled by T.C.A. § 67-810 to a hearing and determination by the State Board "of any complaint he may make on any of the grounds provided for in § 67-806." The State Board is empowered by T.C.A. § 67-838 to effect equalization "by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof. . . ." The State Board is authorized by T.C.A. § 67-932 "to increase or diminish the valuation placed upon any property value by (the Commission)." Any railroad or public utility that is aggrieved by the assessment certified by the State Board and that successfully challenges the assessment in the state or federal courts is entitled to a refund or a credit after payment under protest under T.C.A. § 67-933. T.C.A. § 67-840 provides that the action of the State Board in certifying assessments is considered final action for purposes of judicial review. Judicial review is now controlled by T.C.A. § 4-523(h).

It is apparent from the foregoing analysis that present statutes governing the powers and duties of the State Board are merely a recodification of the statutes as they existed at the time of the **Louisville & Nashville** decision, and that present statutes have effected no substantive change in the powers and duties of the State Board. This court therefore concludes that contrary to the position of the State Board in this case, the present statutory provisions have not in any manner altered or overruled the holding of the Tennessee Supreme Court in **Carroll v. Alsup.**

Finally, it is argued with great earnestness by counsel for the State Board that with the passage of the Tennessee Uniform Administrative Procedures Act (the UAPA), effective July 1, 1975, the state courts now have a broader scope of review of administrative findings than they had prior to the adoption of that Act. Counsel strongly insists that **Carroll v. Alsup** may no longer be the law in Tennessee in view of T.C.A. § 4-523, which provides in pertinent part as follows:

> (h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> > (1) in violation of constitutional or statutory provisions;

The difficulty with the State Board's position with respect to the above quoted provision of the UAPA is that counsel for the State Board conceded and stipulated at the trial of this cause that the courts of the state had the authority prior to the adoption of the UAPA to reverse or modify the decision of an administrative board whenever it found a decision to be "in violation of constitutional or statutory provisions." Thus, it

appears by stipulation that the courts of Tennessee have had the same power both before and after the adoption of the USPA to review the actions of administrative bodies for violations of constitutional or statutory provisions.

While the status of the law as it existed prior to the passage of the UAPA was stipulated, the court finds that the stipulation is a correct statement of the law. In property tax cases, prior to the enactment of the UAPA, an aggrieved taxpayer could obtain judicial review of his assessment by exhausting the statutory administrative review procedure and appealing from the administrative decision through petition for common law certiorari authorized by T.C.A. § 27-801. That statute specifically provided that certiorari could be granted in any case where the board had acted illegally; power to grant relief by petition for certiorari was clearly available where the constitutional or statutory rights of taxpayers were violated. In **McCord**, *supra*, the Tennessee Supreme Court specifically held that the violation of a taxpayer's right to equal protection of the law constituted an illegality that was reviewable by the court on petition for writ of certiorari. The court refused, however, to grant relief, basing its decision on the rule of **Carroll v. Alsup.** Judge Miller in **Alterman Transport Lines, Inc. v. Public Services Comm. of Tennessee** (M.D. Tenn. 1966), 259 F. Supp. 486, 490, characterized the rule of **Carroll v. Alsup** and its progeny as a

> roadblock . . . across all procedural avenues—whether a suit for tax refund after payment under protest, an application to the courts to review by certiorari the findings of the Equalization Board, or a suit in equity to enjoin the challenged assessment as the basis for local taxes—effectively barring access to either of them.

While district courts also have authority under 28 U.S.C. § 1341 to enjoin, suspend or restrain assessments where the court finds "uncertainty surrounding the adequacy of state

remedy," **Hillsborough v. Cromwell,** *supra;* 326 U.S. at 626, this court finds that the possibility of state relief goes beyond mere uncertainty and in fact, under the law of the State of Tennessee as it presently exists, the plaintiffs have no practical remedy at all.

In view of all of the foregoing, the court concludes that it has jurisdiction of the matters before it and that the plaintiffs are entitled to relief.

The sole question remaining for the court's determination is the form and extent of the relief to be granted. Plaintiffs contend that the relief to which they are entitled is a reduction of their final assessments to 63% of the assessments which would otherwise have been determined based upon plaintiffs' property values, conceded to be at 100% of actual value, fixed by the State Board, thereby placing the amount of their taxes on a constitutionally proportionate basis with taxes paid on locally assessed property. The court finds such a reduction to be appropriate in this case. Courts in a number of states have determined that the differential in property appraisal levels shown by an assessment to sales ratio study is the proper indicator of relief to be granted in property tax equalization suits. **See, e.g., Southern Bell Telephone and Telegraph Co. v. County of Dade**, 275 So. 2d 4 (Fla. 1973); **People ex rel. Wenzel v. Chicago & North Western Railway,** 28 Ill. 2d 205, 190 N.E.2d 780 (1963); **Grainger Brothers Co. v. County Board of Equalization,** 180 Neb. 571, 144 N.W. 2d 161 (1966); **In Re Appeal of Kents 2124 Atlantic Ave., Inc.,** 34 N.J. 21, 166 A.2d 763 (1961); **Baken Park, Inc. v. County of Pennington,** 79 S.D. 156, 109 N.W.2d 898 (1961).

It is the duty of the State Board and/or the Commission. to certify to the counties and to the municipalities the proper amount of assessed values determined in accordance with this opinion upon which the counties and municipalities are entitled

to levy a tax. In view of the fact that the appraisal levels vary from county to county, ranging from an average of 23% of value in Hancock County to an average of 89% of value in Sullivan County, the defendants may find it advisable to certify assessments based upon each county's average level of appraisal, rather than the state-wide median for all counties. This matter is left to the judgment of the appropriate defendants.

Judgment will be entered declaring the rights of the plaintiffs in accordance with this opinion and enjoining defendants from certifying or enforcing the challenged assessment of plaintiffs' properties without prejudice to the right of the State Board to rehear and reconsider the assessments for the sole purpose of a reduction to 63% of the assessments that would otherwise have been determined based upon plaintiffs' property values fixed by the State Board. Pending such redetermination the case will be retained on the active docket with any party having the right to apply to the court at any time for other or additional orders.

/s/ L. CLURE MORTON
Chief Judge

APPENDIX D

ORDER

(Entered May 17, 1978)

In accordance with the memorandum to be forthwith filed, it is hereby Ordered that:

1. The Tennessee Public Service Commission, its members, officers, agents, employees, servants, and attorneys, be enjoined and restrained from certifying to the counties and municipalities in Tennessee the amount of the 1977 assessments of plaintiff's properties to be taxed in such counties and municipalities, and that the above-captioned defendants be enjoined and restrained

from taking any other action to enforce the taxes imposed upon plaintiff under the laws of the State of Tennessee based upon the order of the State Board of Equalization of Tennessee dated the 24th day of April, 1978.

2. This injunction be without prejudice to the right of the Tennessee State Board of Equalization to rehear and reconsider the assessments of plaintiff's properties for the sole purpose of a reduction of the assessments fixed by said Board to a level based upon the 63% state-wide median level of appraisal, or, in the judgment of the said Board, to levels based upon each county's average level of appraisal.

3. This injunction be without prejudice to the right of the defendants to make such certifications as are necessary to certify to the various counties and municipalities in Tennessee the 1977 assessments of plaintiff's properties as reduced in accordance with Paragraph 2 hereof; provided, however, defendants be enjoined and restrained from certifying any 1977 assessments of plaintiff's properties above the assessment levels determined in accordance with Paragraph 2 hereof.

4. Pending such redeterminations and certifications by defendants, this case be retained on the active docket of this Court, with any party having the right to apply to the Court at any time for other and additional relief.

/s/ L. CLURE MORTON
Chief Judge

Approved:

/s/ EVERETT H. FALK
EVERETT H. FALK
Deputy Attorney General
Attorney for Defendant
State Board of Equalization

APPENDIX E

ORDER

(Entered May 30, 1978)

It is hereby Ordered that Paragraph 3 of the order of this court entered May 17, 1978, be Amended by the insertion of the word "final" in line 2 between the words "such" and "certifications." Paragraph 3 as so amended states as follows:

> 3. This injunction be without prejudice to the right of the defendants to make such final certifications as are necessary to certify to the various counties and municipalities in Tennessee the 1977 assessments of plaintiff's properties as reduced in accordance with Paragraph 2 hereof; provided, however, defendants be enjoined from certifying any 1977 assessments of plaintiff's properties above the assessment levels determined in accordance with Paragraph 2 hereof.

/s/ L. CLURE MORTON
Chief Judge

APPENDIX F
MEMORANDUM

(Entered June 27, 1978)

These two cases, which were the subjects of a joint hearing in this court on May 16, 1978, were filed in the wake of this court's decision in **Louisville & Nashville Railroad v. Public Service Commission,** No. 78-3142-NA-CV (M.D. Tenn. May 4, 1978) (consolidated suits brought by six railroad companies). The instant cases arose in substantially the same factual context and present essentially the same legal issues as the **L&N** case. The court will, therefore, combine its findings and conclusions in the two cases *sub judice* in one memorandum, which will in turn adopt the reasoning of the **L&N** opinion.

Plaintiff telephone companies filed these suits seeking to restrain and enjoin the Tennessee State Board of Equalization from certifying to the Tennessee Public Service Commission the assessed valuation fixed by it upon plaintiffs' properties for the year 1977 and seeking to restrain and enjoin the Tennessee Public Service Commission from certifying to the counties and municipalities in Tennessee the amounts of the 1977 assessments of plaintiffs' properties in the various counties and municipalities in which plaintiffs are engaged in business or from taking any other action to assess or collect the taxes imposed under the laws of the State of Tennessee based upon the orders of the State Board of Equalization.

The complaints further sought an order declaring such assessments to be illegal, unconstitutional, null and void, and to have the court require the State Board to assess the properties of plaintiffs on the same basis as locally assessed properties in the respective areas in which the plaintiffs maintained properties, or, in the alternative to have the court direct the State Board to consider and determine the assessments of the properties of

plaintiffs based upon such guidelines as the court might direct for equalizing the assessments of plaintiffs' properties with properties of other taxpayers in the manner required by the Constitutions of the United States and the State of Tennessee.

Upon applications of plaintiffs, the court issued temporary restraining orders on May 5, 1978, which were extended by orders dated May 15, 1978, enjoining and restraining both defendants from certifying the values fixed by the State Board upon plaintiffs' properties for the year 1977, and further the court set these causes for hearing on the applications for permanent injunctions, as well as for final determination, for May 16, 1978.

At the hearing on May 16, the court granted a preliminary injunction enjoining and restraining defendants from taking any action to enforce the taxes imposed upon plaintiffs based upon the orders of the State Board under date of April 24, 1978, and further determined that said injunction would not prejudice the right of the State Board to rehear and reconsider the assessments of plaintiffs' properties for the sole purpose of reductions of the assessments fixed by the State Board to levels based upon the statewide median level of appraisal of locally assessed property, or, in the judgment of the said Board, to levels based upon each county's average (i.e., median) level of appraisal. Orders reflecting these directions were approved by counsel and duly entered by the court on May 17, 1978, as amended by the court's order of May 30, 1978.

No oral testimony was introduced at the May 16, hearing. Instead, the parties, by stipulation, agreed that the record in these causes should include the pleadings, the exhibits thereto, the stipulations agreed to by the parties in both actions, exhibits 1 through 5 to the stipulation in action number 78-3167-NA-CV, and the pleadings, testimony, exhibits, and entire record submitted to this court in the **L&N** case, *supra*, and the cases consolidated therewith.

Based upon the record before this court, the following findings of fact are made:

1. South Central Bell Telephone Company, plaintiff in action number 78-3167-NA-CV is a Delaware corporation that has its principal place of business in Birmingham, Alabama, and is duly qualified to carry on its business in the State of Tennessee. South Central Bell is a communications common carrier and provides intrastate and interstate communications services in five south central states, including Tennessee. Its properties in Tennessee are located in the counties of Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, Campbell, Cannon, Carroll, Cheatham, Chester, Claiborne, Cocke, Coffee, Crockett, Cumberland, Davidson, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Loudon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Meigs, Monroe, Montgomery, Moore, Morgan, Obion, Perry, Polk, Rhea, Roane, Robertson, Rutherford, Sequatchie, Sevier, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Union, Wayne, Weakley, White, Williamson, and Wilson.

2. Each of the plaintiffs in action number 78-3182-NA-CV is a public utility, each being a communications common carrier providing communication services in various areas in Tennessee as follows:

(a) Adamsville Telephone Company is a Tennessee corporation providing telephone services and maintaining property in Tennessee in the counties of Chester, McNairy and Hardin.

(b) United Inter-Mountain Telephone Company is a Virginia corporation qualified to engage in business in Tennessee and maintaining telephone services and property in Tennessee in the counties of Carter, Johnson, Greene, Sullivan, Unicoi, Washington, and Hawkins.

(c) Tennessee Telephone Company is a Tennessee corporation providing telephone service and facilities and maintaining properties in Tennessee in the counties of Decatur, Perry, Wayne, Wilson, Rutherford, Benton, Knox, Henderson, Carroll, Marshall, and Davidson.

(d) Ardmore Telephone Company is a Tennessee corporation providing telephone service and facilities and maintaining property in Tennessee in the counties of Giles and Lincoln.

(e) Claiborne Telephone Company is a Tennessee corporation providing telephone service and facilities and maintaining property in Tennessee in the counties of Claiborne and Union.

(f) Concord Telephone Exchange, Inc., is a Tennessee corporation providing telephone service and facilities and maintaining property in Tennessee in Knox County.

(g) Crockett Telephone Company, Inc., is a Tennessee corporation providing telephone service and facilities and maintaining property in Tennessee in the counties of Crockett, Dyer and Haywood.

(h) Humphreys County Telephone Company is a Tennessee corporation providing telephone service and facilities and maintaining property in Tennessee in the county of Humphreys.

(i) Powell Telephone Company is a Tennessee corporation providing telephone service and facilities and maintaining its property in Tennessee in the counties of Anderson, Knox and Grainger.

(j) Tellico Telephone Company, Inc., is a Tennessee corporation providing telephone service and facilities and maintaining its property in Tennessee in the counties of Monroe and McMinn.

(k) West Tennessee Telephone Company, Inc., is a Tennessee corporation providing telephone service and facilities and

maintaining its property in Tennessee in the counties of Carroll, Gibson and Dyer.

3. Defendant Tennessee Public Service Commission (hereinafter the "Commission") is a governmental body created pursuant to Tennessee Code Annotated, sections 65-101, *et seq.*, and is charged with the responsibility of assessing for taxation all properties of telephone companies in Tennessee, including those properties of the plaintiffs herein. The Commission is composed of three Commissioners whose names are set forth in the caption and who are sued only in their official capacities as Commissioners.

4. Defendant State Board of Equalization of Tennessee (hereinafter the "State Board"), created pursuant to Tennessee Code Annotated, sections 4-307, *et seq.*, is charged with the duties and responsibilities set forth in said statutes, including the duty to "review assessments made by the Tennessee Public Service Commission," such as those placed on the properties of plaintiffs in these cases. Said Board is composed of the members listed in the caption hereof who are sued only in their official capacities as members of said State Board.

5. The official residence of all defendants is Davidson County, Tennessee.

6. On July 28, 1977, the Commission directed separate letters to each plaintiff in which it issued a tentative notice of assessment listing the respective properties of each plaintiff in Tennessee based upon an appraisal of not less than 100% of value.

7. Each plaintiff duly filed with the Commission within the time prescribed an exception to the tentative assessment issued by the Commission on the grounds that the assessments of the plaintiff's properties were based upon 100% of value while assessments of properties of locally assessed taxpayers were based on values less than 100%, resulting in unlawful discrimination against each plaintiff.

8. Defendant Commission entered an order adopting its tentative assessment against each plaintiff as a final assessment by the Commission and certified said assessment to defendant State Board. Each plaintiff was duly notified of the action of the Commission by letter dated September 6, 1977, from James L. Talbot, Executive Secretary of the Commission.

9. Each plaintiff herein timely filed a notice of appeal with the defendant State Board seeking equalization of the assessment of its properties with those of locally assessed taxpayers.

10. Defendant State Board conducted a hearing on all appeals on October 17, 1977, including the appeals before it of the plaintiffs in both cases now before this court and the appeals of nine (9) railroad companies including the seven who subsequently sought relief in this court.

11. At the October 17 hearing before the State Board, plaintiff South Central Bell presented in evidence a document entitled "Real Estate Appraisal/Sales Ratio Report" for the calendar year 1976 prepared by the Division of Property Assessments of the Tennessee Comptroller of the Treasury. This report shows that the median level of appraisal in the counties of Tennessee of property other than that assessed centrally by the Public Service Commission varied from a low of 23% of value in Hancock County to 89% of value in Sullivan County.

12. Other pertinent evidence presented to the Board established the following:

(a) The Commissioner's valuation of the properties of each plaintiff in Tennessee represented 100% of value of such properties on January 1, 1977. (Tr. of hearing, Oct. 17, 1977, testimony of Mr. Fleming, pp. 37-38.)

(b) In general, locally assessed properties have not been reappraised for *ad valorem* tax purposes for six (6) or seven (7) years, and each year there is a 5 to 7½% decline in the ratio

of total valuation for assessment purposes to total market value of assessable property. (Tr. of hearing, Dec. 21, 1977, Exh. F, p. 11.)

(c) The statewide median level of appraisal in Tennessee was 62.9% of value. (Tr. of hearing, Dec. 21, 1977, testimony of Dr. Ekeblad, pp. 999-1000.)

(d) Efforts to generate updated reappraisal projects have failed because county officials, more specifically quarterly county courts, have opposed such plans. (Tr. of hearing, Dec. 21, 1977, Exh. F, p. 11.)

(e) Certain county assessors have intentionally undervalued certain locally assessed property. (Tr. of hearing, Dec. 21, 1977, testimony of Mr. Buckmaster and Mr. Coker, pp. 1098-1099, 1129-1131.)

(f) There has been a long-standing practice among assessors in Tennessee not to assess tangible personal property as required by law. In contrast, a substantial percentage of plaintiffs' properties consist of personalty, all of which is valued at 100% by defendant Commission. (Resolution and Minutes of State Board of Equalization, Jan. 13, 1977, June 6, 1977, and Aug. 2, 1977; Exh. G, H, and I to Transcript of hearing, Dec. 21, 1977.)

13. Defendant State Board reached a decision on the appeal of each plaintiff herein on its 1977 property tax assessments based upon the record before it on October 17, 1977, and certain exhibits thereto, which are attached as exhibits 1, 2, 3, 4, and 5 to the stipulation entered into in action number 78-3167-NA-CV, and upon the entire record made by the nint (9) railroad companies in their 1977 appeals to the State Board.

14. The orders of the State Board as to each plaintiff were based upon the same reasoning and adopted the same formula for equalization of the assessments of the plaintiffs' properties with the assessments of other taxpayers as those set forth in the

opinion issued by the State Board pursuant to the appeals by the nine (9) railroads.

15. Based upon the evidence presented to it, the State Board made the following determinations:

(a) Sales ratio studies such as the one introduced into evidence are recognized as evidence of levels of value of properties for equalization purposes.

(b) The procedures in the collection of data were proper and acceptable.

(c) The "median" is the appropriate measure of central tendency in comparisons of property valuations with assessments.

(d) Valuations of locally assessed property had continued to deteriorate, with a number of local authorities making no effort to improve the situation.

(e) Those authorities that were attempting to update the valuations of locally assessed property were being penalized while those that were making no attempt to reappraise property were being rewarded.

16. As a result of its findings, the State Board issued an order to each of the plaintiffs herein in which the Board assessed the value of the properties of plaintiffs at 100% of market value, as had been previously found by the Commission, but with the direction that plaintiffs' assessments in those counties where the median ratio was then below 63% be reduced by an amount to be determined by comparing the individual median ratio for each county below 63% with the 63% statewide average.

These factors ranged from .9841 for Hamblen County, resulting in a reduction of plaintiffs' taxes of $1.59 for every $100 due under the Commission's assessments, to .3651 for Hancock County, decreasing plaintiffs' tax liability thereby $63.49 per

$100. (Reductions for those counties based on a comparison of their median assessments of 62% and 23%, respectively, with plaintiffs' 100% assessments would, of course, be $38 per $100 in Hamblen and $77 per $100 in Hancock.) In those counties with median assessments between sixty-three (63) and one hundred (100) percent of value, plaintiffs received no relief under the Board's formula.

17. Over a period of years, courts have found that locally assessed properties were valued at a smaller percentage of full value than properties assessed by defendant Commission. **See, *e.g.*, Louisville & Nashville Railroad v. Tennessee Public Service Commission,** 249 F. Supp. 984 (M.D. Tenn. 1966), **aff'd** 389 F.2d 247 (6th Cir. 1968); **Southern Railway v. Clement,** 57 Tenn. App. 54, 415 S.W. 2d 146 (1966); **cert. den.** (1967).

18. Because locally assessed properties have been continuously valued at less than 100% of value while plaintiffs' properties have been centrally valued at full value, plaintiffs have been subjected to systematic and intentional discrimination in the valuation and assessment of their properties for *ad valorem* tax purposes.

The legal conclusions to be drawn from the above factual findings are the same as those set forth by this court in its opinion of May 4, 1978, in **Louisville & Nashville Railroad v. Public Service Commission,** No. 78-3142-NA-CV (M.D. Tenn. May 4, 1978), and the court hereby adopts the reasoning and legal principles presented therein. The following conclusions are, therefore, intended only to summarize those principles.

1. Under article 2, sections 28 and 29 of the Constitution of the State of Tennessee, as amended in 1972, all property in the State of Tennessee must be valued at 100% of market value, and the failure of the taxing authorities to so value one or more sub-classes permits those sub-classes whose property is appraised at market value to seek and obtain equalization.

Construction of this constitutional provision by this court is consistent with the construction placed thereon by the Legislature of the State of Tennessee in its adoption of Tennessee Code Annotated, sections 67-606 and 67-806. It is further consistent with the findings of the State Board that equalization is required among all classifications of property.

2. Plaintiffs are entitled to equalization relief and have been effectively denied the same by defendants. Therefore, plaintiffs are entitled to invoke federal jurisdiction under the equal protection clause of the fourteenth amendment. Thus, this court has jurisdiction of this cause under 28 U.S.C. § 1331 since this action arises under the fourteenth amendment of the United States Constitution. Action number 78-3167-NA-CV presents the additional jurisdictional basis of 28 U.S.C. § 1332.

3. The equal protection clause of the fourteenth amendment of the United States Constitution requires that the values of different classes of property must be evenly determined from one classification to another even though it is permissible for property to be classified for the purpose of applying unequal assessment percentages to value.

4. The systematic and intentional valuation of locally assessed properties at less than 100% of fair market value constitutes illegal discrimination against plaintiffs in violation of article 2, sections 28 and 29 of the Tennessee Constitution and the equal protection clause of the fourteenth amendment of the Constitution of the United States.

5. For the reasons set forth below, this court is not restrained by 28 U.S.C. § 1341 (commonly known as the "tax injunction statute"), from granting relief since there is no "plain, speedy or efficient remedy" for plaintiffs in the courts of Tennessee to prevent the discrimination against them in the valuation of their properties for assessment purposes.

6. The possibility of plaintiffs' obtaining relief from these assessments in the State courts is beyond mere uncertainty, and in fact, under the law of the State of Tennessee as it presently exists, plaintiffs have no practical remedy in the State courts for the following reasons:

(a) Under the Uniform Administrative Procedures adopted in Tennessee and codified in TCA §§ 4-507—4-527, plaintiffs may petition the State Board for a rehearing, but such petition does not stay the effectiveness of the State Board's determination or the certification of its action to the Commission. At the time this court issued the temporary restraining order in this cause, the State Board had already certified its action to the defendant Commission, and said Commission was revising the details of these assessments to conform with the total assessment established by the State Board and was completing the apportionment of said assessment to the counties and municipalities in which the respective plaintiffs engage in business. If the temporary restraining order had not been issued, the Commission would have certified the assessments to the counties and municipalities, and the appropriate officials thereof. Upon certification of said assessments, plaintiffs would have been liable and would have been required to pay the taxes based upon such assessments. The collection of said taxes based on these assessments would have been merely a routine administrative function.

(b) Under Tennessee law the following rules stated by the Tennessee Supreme Court in **Carroll v. Alsup,** 107 Tenn. 257, 64 S.W. 193 (1901), are applicable where a taxpayer complains because the assessments of other taxpayer's properties are based upon a smaller percentage of value than the taxpayer's:

> The recourse offered to the taxpayer is not to reduce his own assessment, unless it is beyond its cash actual value, but to have that of his neighbor increased until both reach the point of actual cash value and thus become equal and

> uniform, as the law provides and the Constitution contemplates.

Id. at 284, 64 S.W. at 200. The court further held that

> It is no ground for relief to him, nor can any taxpayer be heard to complain of his assessment when it is below the actual cash valuation of the property, on the grounds that his neighbor's property is assessed at a less percentage of its true or actual value than his own. When he comes into Court asking relief of his own assessment he must be able to allege and show that his property is assessed at more than its actual cash value.

Id. at 292, 64 S.W. at 202.

(c) **Carroll v. Alsup** has been reaffirmed subsequently by Tennessee courts on several occasions. **Southern Railway v. Clement,** 57 Tenn. App. 54, 415 S.W.2d 146 (1966), **cert. denied** (1967); **Biltmore Hotel Court v. City of Berry Hill,** 216 Tenn. 63, 390 S.W.2d 223 (1964); **Mayor of Morristown v. Burke,** 207 Tenn. 180, 338 S.W.2d 593 (1953); **McCord v. Nashville Chattanooga & St. Louis Railway,** 187 Tenn. 277, 213 S.W.2d 196 (1948).

(d) Neither the amendment to article 2, section 28 of the Tennessee Constitution nor the adoption of the Uniform Administrative Procedures Act nor other statutory changes have changed the rules of **Carroll v. Alsup** stated above.

(e) The rules of **Carroll v. Alsup** constitute a bar to any plain, efficient, or speedy relief which might be obtained by plaintiffs in the courts of Tennessee. See **Hillsborough v. Township Cromwell,** 326 U.S. 620, 90 L. Ed. 358; 66 S. Ct. 445 (1946); **Southland Mall, Inc. v. Garner,** 293 F. Supp. 1370 (W.D. Tenn. 1968) **aff'd** 445 F.2d 887 (6th Cir. 1972); **Alterman Transport Lines, Inc. v. Public Service Commission,** 259 F. Supp. 486 (M.D. Tenn. 1966).

7. Federal declaratory and injunctive relief is proper and necessary to protect the rights of plaintiffs and to prevent discrimination against them in violation of the fourteenth amendment of the United States Constitution.

8. Plaintiffs are entitled to a permanent injunction enjoining the defendants from taking any action to enforce taxes computed on the basis of the orders of the defendant State Board, dated April 24, 1978, issued to each plaintiff, and further, defendant Commission is enjoined from certifying these assessments to the counties and municipalities of Tennessee, and the appropriate officials thereof, based upon said orders.

9. The permanent injunction granted by this court is without prejudice to the right of defendant State Board to rehear and reconsider the appeals of plaintiff of their 1977 assessments for the sole purpose of reducing said assessments to a level based upon the 63% statewide median level of appraisal or to levels based upon each county's median level of appraisal.

10. This injunction is without prejudice to the right of defendants to make final certifications of the 1977 assessments of plaintiffs' properties, as reduced in accordance with the foregoing paragraph, to the various counties and municipalities in Tennessee in which the respective plaintiffs are engaged in business; provided, however, that said defendants are enjoined and restrained from certifying any 1977 assessments of the properties of these plaintiffs above the assessment levels determined in accordance with the foregoing paragraph.

11. Pending such redeterminations and certifications by defendants, this case shall be retained on the active docket of this court, with any party having the right to apply to the court at any time for further and additional relief.

/s/ L. CLURE MORTON
Chief Judge

APPENDIX G

ORDER

(Entered May 17, 1978)

In accordance with the memorandum to be forthwith filed, it is hereby ORDERED that:

1. The Tennessee Public Service Commission, its members, officers, agents, employees, servants, and attorneys, be enjoined and restrained from certifying to the counties and municipalities in Tennessee the amount of the 1977 assessments of plaintiff's properties to be taxed in such counties and municipalities, and that the above-captioned defendants be enjoined and restrained from taking any other action to enforce the taxes imposed upon plaintiffs under the laws of the State of Tennessee based upon the order of the State Board of Equalization of Tennessee dated the 24th day of April, 1978.

2. This injunction be without prejudice to the right of the Tennessee State Board of Equalization to rehear and reconsider the assessments of plaintiffs' properties for the sole purpose of reductions of the assessments fixed by said Board to levels based upon the 63% state-wide median level of appraisal, or, in the judgment of the said Board, to levels based upon each county's average level of appraisal.

3. This injunction be without prejudice to the right of the defendants to make such certifications as are necessary to cer-

APPENDIX H

ORDER

(Entered May 30, 1978)

It is hereby ORDERED that Paragraph 3 of the order of this court entered May 17, 1978, be AMENDED by the insertion of the word "final" in line 2 between the words "such" and "certifications." Paragraph 3 as so amended states as follows:

3. This injunction be without prejudice to the right of the defendants to make such final certifications as are necessary to certify to the various counties and municipalities in Tennessee the 1977 assessments of plaintiffs' properties as reduced in accordance with Paragraph 2 hereof; provided, however, defendants be enjoined from certifying any 1977 assessments of plaintiffs' properties above the assessment levels determined in accordance with Paragraph 2 hereof.

/s/ L. CLURE MORTON
Chief Judge

APPENDIX I

Nos. 78-1308, 78-1332, 78-1339

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

LOUISVILLE AND NASHVILLE RAILROAD CO., ET AL.,
Plaintiffs-Appellees,

v.

PUBLIC SERVICE COMMISSION and STATE BOARD OF EQUALIZATION OF TENNESSEE,
Defendants-Appellants.

APPEAL from the United States District Court for the Middle District of Tennessee.

Decided and Filed September 26, 1980.

Before: CELEBREZZE and KEITH, Circuit Judges, and PHILLIPS, Senior Circuit Judge.

PHILLIPS, Senior Circuit Judge. The Public Service Commission and the State Board of Equalization of Tennessee seek reversal of the orders of the United States District Court for the Middle District of Tennessee with respect to ad valorem tax assessments. The district court enjoined certification of valuations or assessments or taking other action to enforce the 1977 ad valorem property tax assessments on properties of the taxpayers except to the extent that the assessments are reduced to the state-wide median level of appraisal for locally assessed properties or to levels based on each county's average of appraisal for locally assessed properties. We affirm.

I

The primary issue is whether the district court was barred from enjoining the certification of the tax assessments pursuant to 28 U.S.C. § 1341.[1] This requires a determination of whether appellees have a plain, speedy and efficient remedy under Tennessee law in light of *Carroll* v. *Alsup*, 107 Tenn. 257, 64 S.W. 193 (1901).

Reference is made to the comprehensive opinion of Chief District Judge L. Clure Morton at — F.Supp. — (M.D. Tenn. 1978), for a recitation of the facts. We summarize the pertinent facts for the purposes of this opinion.

The taxpayers are railroad and telephone companies. As public utilities, they are assessed centrally for ad valorem tax purposes by the Public Service Commission (the Commission), using the unit rule of appraisal. The Commission has the responsibility for assessing all "public utility" property, which includes that of the telephone companies and railroads. T.C.A. §§ 67-901, 67-902. Other properties are assessed locally by county or municipal tax assessors.

In early 1978, the taxpayers filed complaints in the district court seeking injunctive relief restraining the defendants from certifying plaintiffs' 1977 property tax assessments in accordance with the final order and decision of the State Board of Equalization. The taxpayers also sought a declaration that the assessments were null and void and that the Board of Equalization be directed to equalize plaintiffs' appraisals on the basis of a state-wide average ratio for locally assessed properties of 63 per cent as reflected in a study conducted by the Division of Property Assessments of the State of Tennessee.

The taxpayers contended that locally assessed properties

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[1] **§ 1341. Taxes by States**

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

were valued intentionally and systematically by local assessors at lower percentages (state-wide average of 63 per cent of full value) than were the centrally assessed properties (appraised at 100 per cent of full value). They asserted that they were entitled to reduced valuations in order to be equalized with locally assessed properties in conformity with the equal protection and commerce clauses of the Constitution of the United States. They alleged lack of a plain, speedy, efficient or adequate remedy at law or in equity in the Tennessee courts.

The State Board of Equalization and Public Service Commission argue that plaintiffs' suits are barred by the Tax Injunction Act, 28 U.S.C. § 1341, *supra*, n. 1, and that an appropriate judicial remedy is available in the State courts.

In his memorandum opinion, Chief Judge Morton found that plaintiffs' properties were being appraised at 100 per cent of value while locally assessed properties were being appraised at a median of 63 per cent of value. The disparity was found to be intentional and systematic. Judge Morton held that the Constitution of Tennessee, art. 2, § 28 as amended in 1972 (propularly known as Question 3) required the reclassification of all property for ad valorem tax purposes and valuation at 100 per cent of full market value; and that the action of taxing authorities in valuing public utility properties at full value and other properties at less than full value entitles the taxpayers to obtain equalization.

The district court also found that the rule in *Carroll* v. *Alsup*, *supra*, did not constitute a plain, speedy and efficient remedy under the facts of this case. The State Board of Equalization was enjoined from certifying plaintiffs' 1977 valuations except to the extent that they were adjusted to the state-wide median of valuation for locally assessed properties, 63 per cent, or to each county's average level of appraisal for locally assessed properties.

II

In 1972, the Constitution of Tennessee, art. 2, § 28 was amended by the ratification of Question 3 by the electorate. Article 2 § 28, prior to amendment, required in pertinent part:

> All property shall be taxed according to its value, . . . so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of the same value . . .

Article 2 § 28, as amended, among other things, classifies properties for assessment purposes:

> For purposes of taxation, property shall be classified into three classes, to wit: Real Property, Tangible Personal Property and Intangible Personal Property.
>
> Real Property shall be classified into four (4) subclassifications and assessed as follows:
>
> (a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;
>
> (b) Industrial and Commercial Property, to be assessed at forty (40%) percent of its value;
>
> (c) Residential Property, to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and
>
> (d) Farm Property, to be assessed at twenty-five (25%) percent of its value. . . . .
>
> Tangible Personal Property shall be classified into three (3) subclassifications and assessed as follows:
>
> (a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;
>
> (b) Industrial and Commercial Property, to be assessed at thirty (30%) percent of its value; and
>
> (c) All other Tanglibe Personal Property, to be assessed at five (5%) percent of its value; . . . .

> The Legislature shall have power to classify Intangible Personal Property into subclassifications and to establish a ratio of assessment to value in each class or subclass, and shall provide fair and equitable methods of apportionment of the value of same to this State for purposes of taxation. . . . .
>
> The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

The term "value" in Article 2 § 28 prior to the amendment was defined by T.C.A. § 67-605, since repealed, as actual cash value. For the purposes of post amendment definition, T.C.A. § 67-606 provides:

> 67-606. **Basis of valuation.** — The value of all property shall be ascertained from the evidences of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values, and when appropriate subject to the provisions of the Agricultural, Forest, and Open Space Land Act of 1976, codified in §§ 67-650 — 67-658.

The willing buyer/willing seller concept, if correctly applied, would result in valuation at full market value or fair market value, in theory an appraisal figure of 100 per cent of the property's "sound, intrinsic and immediate value."

However, for the purposes of an equal protection attack, whether all property is appraised at 100 per cent or 50 per cent of the full worth is not material. The issue on this appeal is quality of the standard of assessment among the properties.

As amended in 1972, Art. 2 § 28 classifies properties for assessment purposes. In all cases, the assessment for each

classification/subclassification is a percentage of "its value." Tennessee has chosen to classify properties for assessment purposes, not valuation purposes.

In a comprehensive opinion rendered prior to the 1972 amendment to Art. 2 § 28, in *Louisville and Nashville Railway Company* v. *Public Service Commission,* 249 F.Supp. 894 (M.D. Tenn. 1967), District Judge William E. Miller enjoined the certification or enforcement of assessments of railroad properties at a higher percentage of actual cash value than the custom of local Tennessee tax assessors in assessing other property at a smaller fraction of actual cash value. Judge Miller held this system of discriminatory assessment against railroads to be violative of the equal protection clause of the fourteenth amendment. This court affirmed. 389 F.2d 247 (6th Cir. 1968).

III

Plaintiffs' equitable remedy in a federal court is barred by 28 U.S.C. § 1341 if a plain, speedy and efficient remedy is available in the state courts. Plaintiffs' right to declaratory relief would be barred under similar principles. *See Great Lakes Dredge & Dock Co.* v. *Huffman,* 319 U.S. 293 (1943).

In Tennessee, the remedy available to a complaining taxpayer premised on allegations of disproportionate assessments or valuations is governed by the State Supreme Court's pronouncements in *Carroll* v. *Alsup, supra,* wherein the court held:

> We have, therefore, in the present case a property owner who confesses that his property is assessed at less than its actual value, complaining because, in his opinion, his neighbor's property is assessed at a still [292] lower valuation. It is no ground for relief to him, nor can any taxpayer be heard to complain of his assessment when it is below the actual cash valuation of the property, on the grounds that his neighbor's property is assessed at a less

> percentage of its true or actual value than his own. When he comes into Court asking relief of his own assessment he must be able to allege and show that his property is assessed at more than its actual cash value. He may come before an Equalizing Board, or, perhaps, before the Courts, and show that his neighbor's property is assessed at less than its actual cash value and ask to have it raised to his own, if his is at the cash value, and in this way the Courts, Legislatures and taxpayers will co-operate to tax all property at its actual cash value and to make all taxes equal and uniform, as the Constitution contemplates. 107 Tenn. at 291-92, 64 S.W. at 201-02.

The Commission and State Board of Equalization assert that *Carroll* v. *Alsup* is no longer the rule in Tennessee and that appellees have a plain, speedy and efficient remedy under State law. Appellants premise their argument on three basis factors: (1) the amendment of Art. 2 § 28; (2) the subsequent changes in the tax assessment statutes; and (3) the enactment of the Uniform Administrative Procedures Act (UAPA) in 1974.

Appellants argue that prior to the amendment of Art. 2 § 28, the ad valorem tax was based on value which was defined as actual cash value. *See* T.C.A. § 67-605 (repealed). Art. 2 § 28, as amended, is based on value ascertained by the willing seller/willing buyer concept. *See* T.C.A. § 67-606. However, Art. 2 § 28 also states:

> The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the legislature shall direct.

Appellants argue that the equalization level required by the constitution is not the market value level but rather is the ratio of assessment to market value. Therefore, appellants conclude, *Carroll* v. *Alsup*, does not bar the equalization of values to levels below market value where it is required to

achieve equality and uniformity of the *ratios* of assessment to value. We disagree.

Prior to the amendment of Art. 2 § 28, property was required to be assessed on the basis of actual cash value. Under the amendment, assessments are based on a designated percentage of value. A taxpayer who is assessed as directed by the constitution and statutes is in no different a position as the *Carroll* v. *Alsup* taxpayer merely because the State constitution, as amended, required property to be *assessed* at a percentage of market value.

Further, even though the ratio of assessment to value must be the same within each subclass as mandated by Art. 2 § 28, the valuation of the properties is the figure to which the assessment is applied, both under the old and new Art. 2 § 28. Under the 1972 amendment, public utility real property is to be assessed at 55 per cent of its value, industrial and commercial real property at 40 per cent of its value and residential and farm property at 25 per cent of its value. The district court found that the latter catagories are being assessed respectively at 40 per cent and 25 per cent of 63 per cent of value. The disparity in valuations creates the anomalous result that locally assessed properties are being assessed, in the case of industrial and commercial property, at a rate of 25.2 per cent (40 per cent of 63 per cent of value) while public utility properties are being assessed at 55 per cent (55 per cent of 100 per cent of value). Judge Morton held that the mandate of Art. 2 § 28 has been thwarted because local tax assessors are not assessing properties at the required percentage of their full values.

Because Art. 2 § 28 classifies and subclassifies properties, applying different percentages of assessment to value, it is the valuation of the properties against which the unequal nonuniformity treatment allegations must be measured. The taxpayers raise the issue of nonuniformity in valuations. Appellants contend that the constitution requires only that the ratio of assessment to value be equal and uniform within each class

or subclass. We agree with the district court that the constitutional requirement that all property must be valued at full market value would be emasculated by the adoption of this contention. If the rule in *Carroll* v. *Alsup* is still in effect, it would be controlling in any litigation in the State courts.

Appellants argue that the change in the tax assessment laws has altered the rule in *Carroll* v. *Alsup*. In effect, appellants contend that the Property Assessment and Classification Act of 1973, in particular T.C.A. § 67-838[2] does not contain a value standard for equalization purposes as was the case in T.C.A. § 67-822[3] (repealed) which mandated that equalization was required to conform to the standard of actual cash value. The equalization standard of T.C.A. § 67-838 only requires that equalization be accomplished "in accordance with law." Since Art. 2 § 28 requires equality in the ratio of assessment to value, appellants argue, T.C.A. § 67-838 does not bar equalization

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[2] T.C.A. § 67-838 reads in pertinent part:

> Upon its consideration of reports made to it, together with the evidence submitted therewith, or other information available, the state board or the assessment appeals commission if such has been created by the state board under § 67-831 shall take whatever steps it deems are necessary to effect the assessment of property in accordance with the constitution of Tennessee and the laws of the state. Equalization may be made by said board or commission as the case may be by reducing or increasing the appraised values of properties within any taxing jurisdiction, or any part thereof, in such manner as is determined by the state board of equalization will enable said board or commission to justly and equitably equalize assessments in accordance with law.

[3] T.C.A. § 67-822 (repealed) required the State Board of Equalization to:

> receive, and consider all complaints and reports made to it, together with the evidence submitted therewith; and shall equalize, compute, and fix the value of all such properties within its jurisdiction by the standard of the actual cash value of same, and, for said purposes, said Board shall have the power, and it is made its duty to reduce or increase, values of property so that the values of all assessments when so equalized shall conform to said standard of actual cash value. Equalization of such properties may be made by said Board, by reducing or increasing the values thereof, by classification of property, or by wards, civil districts or counties or in such manner as will enable the Board to justly and equitably equalize assessments in conformity with said standard.

actions which have the effect of lowering appraised values below market value when necessary to meet ratio equality requirements.

A comparison of the two statutes reveals no material or significant change in the law with respect to the application of the equal protection clause of the fourteenth amendment. The powers, duties, obligations and rights of the State Board of Equalization have not been altered materially. Since the complaints of the taxpayers are the same as those asserted by the taxpayer in *Carroll* v. *Alsup* and the statutory authority of the State Board of Equalization to remedy appellees' complaints is substantially the same as its statutory authority at the time of *Carroll* v. *Alsup*, we cannot accept appellants' proposition that the changes in the tax assessment laws have altered the rule in that case.

Appellants further assert that the enactment of the UAPA in Tennessee in 1974 has altered the rule in *Carroll* v. *Alsup*. Prior to the enactment of the UAPA, judicial review of the State Board of Equalization's actions was obtainable through the common law writ of certiorari. Appellants argue that such a review did not include a review of the merits, the powers of the court being merely supervisory. The UAPA, they assert, changes the judicial function of the reviewing court from supervisory to appellate in that the making, review and equalization of tax assessments are defined as "contested cases" in T.C.A. § 4-508(b). *See* T.C.A. § 4-523(h). Appellants conclude that this change removes the *Carroll* v. *Alsup* bar to equalization relief of an individual taxpayer seeking to have his assessment equalized below the level of market value where other taxpayers' properties are assessed based on lower appraisals than his own.

The taxpayers contend that the two minor distinctions between § 4-523(h) and the common law writ of certiorari do not alter the rule. The first goes to the standard of review and has no bearing here. The second goes to the court's § 4-523(h) power to modify an agency decision. However, such power

existed in the reviewing court prior to the enactment of the UAPA. *See Prosterman* v. *Tennessee State Board of Dental Examiners,* 168 Tenn. 16, 73 S.W.2d 687 (1934).

We find no language or interpretation thereof in either the Tennessee Constitution, the tax assessment laws or the UAPA which overrules, expressly or impliedly, the rule in *Carroll* v. *Alsup*. From our analysis, it is apparant that the rule remains in full force and effect in Tennessee and will remain so until such time as it is overruled by the Supreme Court of Tennessee or changed by the Tennessee Legislature.

In *Township of Hillsborough* v. *Cromwell,* 326 U.S. 620 (1946), the Court held a rule comparable to that of *Carroll* v. *Alsup* as employed in New Jersey "is not adequate to protect the respondent's rights under the federal Constitution." 326 U.S. at 624. Therefore, we find that the district court was not barred by 28 U.S.C. § 1341 from enjoining the State Board of Equalization's certification of appellees' assessments for the year 1977.

Furthermore, we conclude that the principles requiring application of the equal protection clause enunciated by District Judge William E. Miller in *Louisville and Nashville Railroad Company* v. *Public Service Commission, supra,* 249 F.Supp. 894 (M.D. Tenn. 1967), *aff'd,* 389 F.2d 247 (6th Cir. 1968) are controlling in the present case. The right of the appellee taxpayers to the equal protection of the law is not affected by the 1972 constitutional amendments or subsequent statutes relied upon by the Commission and State Board of Equalization.

The other contentions raised by appellants urging reversal of the district court have been considered and found to be without merit.

The judgment of the district court is affirmed. No costs are taxed. Each party will bear its own costs on this appeal.

APPENDIX J

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1254.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Sec. 28. Taxable property—Valuation—Rates.—In accordance with the following provisions, all property real, personal or mixed shall be subject to taxation, but the Legislature may except such as may be held by the State, by Counties, Cities or Towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except the direct product of the soil in the hands of the producer, and his immediate vendee, and the entire amount of money deposited in an individual's personal or family checking or savings accounts. For purposes of taxation, property shall be classified into three classes, to wit: Real Property, Tangible Personal Property and Intangible Personal Property.

Real Property shall be classified into four (4) subclassifications and assessed as follows:

(a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;

(b) Industrial and Commercial Property, to be assessed at forty (40%) percent of its value;

(c) Residential Property, to be assessed at twenty-five (25%) percent of its value, provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property; and

(d) Farm Property, to be assessed at twenty-five (25%) percent of its value.

House trailers, mobile homes, and all other similar movable structures used for commercial, industrial, or residential purposes shall be assessed as Real Property as an improvement to the land where located.

The Legislature shall provide tax relief to elderly low-income taxpayers through payments by the State to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed, directly or indirectly, upon Counties, Cities or Towns; provided, that such tax relief for the years 1973 through 1977 shall be not less than an amount equal to the State, County, and Municipal Taxes on Five Thousand ($5,000) Dollars worth of the full market value (or One Thousand Two Hundred Fifty ($1,250) Dollars of the assessed value) of property used for a residence by any taxpayer over sixty-five (65) years of age for a period of one (1) year prior to the date of assessment; provided further, that such relief shall not extend to persons having a total annual income from all sources in excess of Four Thousand Eight Hundred ($4,800) Dollars.

The Legislature may provide tax relief to home owners totally and permanently disabled, irrespective of age, as provided herein for the elderly.

Tangible Personal Property shall be classified into three (3) subclassifications and assessed as follows:

(a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;

(b) Industrial and Commercial Property, to be assessed to thirty (30%) percent of its value; and

(c) All other Tangible Personal Property, to be assessed at five (5%) percent of its value; provided, however, that the Legislature shall exempt Seven Thousand Five Hundred ($7,500) Dollars worth of such Tangible Personal Property which shall cover personal household goods and furnishings, wearing apparel and other such tangible property in the hands of a taxpayer.

The Legislature shall have power to classify Intangible Personal Property into subclassifications and to establish a ratio of assessment to value in each class or subclass, and shall provide fair and equitable methods of apportionment of the value of same to this State for purposes of taxation. Banks, Insurance Companies, Loan and Investment Companies, Savings and Loan Associations, and all similar financial institutions, shall be assessed and taxed in such manner as the Legislature shall direct; provided that for the year 1973, or until such time as the Legislature may provide otherwise, the ratio of assessment to value of property presently taxed shall remain the same as provided by law for the year 1972; provided further that the taxes imposed upon such financial institutions, and paid by them, shall be in lieu of all taxes on the redemeeable or cash value of all of their outstanding shares of capital stock, policies of insurance, customer savings and checking accounts, certificates of deposit, and certificates of investment, by whatever name called, including other intangible corporate property of such financial institutions.

The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

The Legislature shall have power to tax merchants, peddlers, and privileges, in such maner as they may from time to time direct, and the Legislature may levy a gross receipts tax on merchants and businesses in lieu of ad valorem taxes on the inventories of merchandise held by such merchants and businesses for sale or exchange. The portion of a Merchant's Capital used in the purpose of merchandise sold by him to non-residents and sent beyond the State, shall not be taxed at a rate higher than the ad valorem tax on property. The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem.

This amendment shall take effect on the first day of January, 1973. [As Amended; Adopted in Convention September 14, 1971; Approved at election August 3, 1972.]

67-606. Basis of valuation.—The value of all property shall be ascertained from the evidences of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values, and when appropriate subject to the provisions of the Agricultural, Forest, and Open Space Land Act of 1976, codified in §§ 67-650—67-658.

In determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions, of the appropriate assessment manuals issued by the state division of property assessments and approved by the state board of equalization.

For determining the value of real property, such manuals shall provide for consideration of the following factors:

(1) location;

(2) current use;

(3) whether income bearing or nonincome bearing;

(4) zoning restrictions on use;

(5) legal restrictions on use;

(6) availability of water, electricity, gas, sewers, street lighting, and other municipal services;

(7) natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land; and

(8) all other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of industrial, commercial, farm machinery and other personal property, such manuals shall provide for consideration of the following factors:

(1) current use;

(2) depreciated value;

(3) actual value after allowance for obsolescence;

(4) all other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

(5) Notwithstanding the foregoing, all farm personal property and also all household and kitchen furniture, tableware, musicial instruments, wearing apparel, private passenger motor vehicles, jewelry and other personal property of similar character used in the taxpayer's own household, together with

all intangible property, including bank accounts, of the taxpayer, may be assumed prima facie by the assessor of property to be of a value not in excess of seven thousand five hundred dollars ($7,500) per individual and fifteen thousand dollars ($15,000) for jointly owned property held by husband and wife in the absence of any tax return or schedule to the contrary.

It is the legislative intent hereby declared that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.

Provided, that if the tax computed on an erroneous basis of valuation of assessment has been paid prior to certification of the corrected assessment by the assessor, the trustee or municipal collector shall, within sixty (60) days after receipt of such certification from the assessor, refund to the taxpayer that portion of such tax paid which resulted from the erroneous assessment, such refund to be made without the necessity of payment under protest or such other requirements as usually pertain to refunds of taxes unjustly or illegally collected. [Acts 1973, ch. 226, § 6; 1974 (Adj. S.), ch. 771, § 8; 1976 (Adj. S.), ch. 782, § 13; 1977, ch. 262, § 1.]

67-838. Equaliziation action by state board.—Upon its consideration of reports made to it, together with the evidence submitted therewith, or other information available, the state board or the assessment appeals commission if such has been created by the state board under § 67-831 shall take whatever steps it deems are necessary to effect the assessment of property in accordance with the constitution of Tennessee and the laws of

the state. Equalization may be made by said board or commission as the case may be by reducing or increasing the appraised values of properties within any taxing jurisidiction, or any part thereof, in such manner as is determined by the state board of equalization will enable said board or commission to justly and equitable equalize assessments in accordance with law.

In the event that the state board of equaliziation or the assessment appeals commission as the case may be deems it necessary to increase or decrease appraised values of properties of any taxing jurisdiction, or any part thereof, in any manner whereby its action affects properties in general rather than individual properties, it is not necessary that the state board or the assessment appeals commission as the case may be notify each individual property owner as provided in § 67-839; provided, however, said board or commission shall cause to be published at least once, in a newspaper of general circulation within such taxing jurisdiction affected by the action of said board or commission, a notice of said action of the state board or the assessment appeals commission as the case may be. [Acts 1973, ch. 226, § 10; 1975, ch. 171, § 8.]

No. 80-1038

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

PUBLIC SERVICE COMMISSION OF THE STATE OF TENNESSEE, et al.,
Petitioners,

v.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Respondents are dissatisfied with the Petitioners' presentation of the questions involved, and, therefore, present the sole question as follows:

Was the district court barred by 28 U.S.C. § 1341 from enjoining the certification of Respondents' property tax assessments by Tennessee assessing agencies?

PARTIES

1. The petitioners are the Public Service Commission of the State of Tennessee; Honorable Bob Clement, Chairman, Honorable Frank D. Cochran, and Honorable Z. D. Atkins, Members of the Public Service Commission of the State of Tennessee; the State Board of Equalization of the State of Tennessee; Honorable Ray Blanton, Honorable Gentry Crowell, Honorable Harlan Mathews, Honorable Jayne Ann Woods, Honorable David Walker, and Honorable William O. Beach, Members of the State Board of Equalization of the State of Tennessee.

2. The respondents are Louisville and Nashville Railroad Company; Clinchfield Railroad Company; Southern Railway Company; Cincinnati, New Orleans and Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Illinois Central Gulf Railroad Company; South Central Bell Telephone Company; Adamsville Telephone Company; Ardmore Telephone Co., Inc.;[1] United Inter-Mountain Telephone Company; Tennessee Telephone Company; Con-

[1] The Ardmore Telephone Co., Inc., which is a party in this case, was omitted from the list of parties contained in the petition.

cord Telephone Exchange, Inc.; Claiborne Telephone Company; West Tennessee Telephone Company; Crockett Telephone Company, Inc.; Humphreys County Telephone Company; Powell Telephone Company; and Tellico Telephone Company.[2]

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[2] Attached as Appendix A is a list of parent, subsidiary and affiliated companies in compliance with Rule 28.1.

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v.

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Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was filed September 26, 1980 and is reported at 631 F.2d 426 (1980). The opinion of the United States District Court for the Middle District of Tennessee was filed May 4, 1978 and is reported at 493 F.Supp. 162 (1978). Copies of these

opinions are included in the appendix to the petition. (Appx. A4-A28 and A46-A56)

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

STATEMENT OF THE CASE

Respondents agree, in general, with the Statement of the Case contained in the petition. However, Respondents do not agree that the statements made on pages 9 and 10 of the petition regarding the reliability of sales ratio studies for purposes of comparison between the level of assessment of centrally assessed public utility property and that of locally assessed property, accurately represent the evidence in the case. However, since the district court found that the level of appraisal for assessment purposes of locally assessed property in Tennessee was 63%, since there was ample evidence in the record to support such a conclusion, and since the Sixth Circuit affirmed such a finding and the issues presented by the petition do not call into question the accuracy of such a finding, no counterstatement of the case will be made.

REASONS FOR DENYING THE WRIT

I

The Issues Presented By This Case Are Not Sufficiently Special Or Important To Warrant Review By This Court.

The petition does not comply with Rule 17 in that it does not set forth the reasons relied upon for the allowance of the writ. Rule 17 states that certiorari will be

granted only where special or important reasons for doing so exist. The petition has not set forth any of the reasons for granting certiorari enumerated in Rule 17 nor any other reasons. The petition is no more than an appellate brief which reargues the merits of the case that was presented to the Sixth Circuit. The issues presented by this case are, in fact, not sufficiently important to warrant review by this Court and the petition should therefore be denied.

II

The Principal Question Presented By The Petition For Certiorari Is Not An Issue In This Case And Has Been Raised For The First Time In This Petition For Certiorari.

Before the Sixth Circuit the Petitioners argued that the issues in this case were:

1. Was the district court barred by 28 U.S.C. § 1341 from enjoining the certification of railroad property tax assessments by Tennessee assessing agencies?

2. Was federal declaratory and injunctive relief necessary to protect the railroads from the irreparable loss of a federally protected right?

3. Was federal declaratory and injunctive tax equalization relief necessary to protect the railroads' right to the equal protection of the laws before the state courts have had an opportunity to determine the extent of the right of the railroads to tax equalization under State law as embodied in the State constitution?

4. Did the district court erroneously substitute its judgment for that of the state assessing and tax equalization agencies in granting injunctive equalization relief?

In the Court of Appeals the Petitioners did not question the Respondents' right to equalization relief if Respondents' interpretation of Tennessee law was correct. Both the district court and the Court of Appeals found Respondents' interpretation of Tennessee law to be correct. It was simply the insistence of the Petitioners that the Tennessee law should first be interpreted by the state court rather than the federal courts. Now, for the first time, Petitioners assert that the Respondents' right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution was not violated "simply because Respondents' property may have been illegally assessed under Tennessee property tax laws." As authority for this assertion, Petitioners rely on *Nashville, C. & St. L. Ry.* v. *Browning,* 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940), a case which was neither cited nor relied upon by the Petitioners before the Sixth Circuit (see Table of Authorities from Appellants' Brief before the Sixth Circuit attached as Appendix B). *Browning* does not stand for the proposition that a state may disregard its laws in dealing with its citizens and nonetheless not be in violation of the equal protection clause of the Fourteenth Amendment. In *Browning,* Justice Frankfurter simply recognized that in the peculiar factual situation where all agencies of the state are conforming to a practice, systematic and unbroken for many years, which has never before been questioned, that practice may, in certain circumstances, be considered to be the "law" of the state. Such a conclusion, however, requires a factual determination based upon the record in the particular case.

Twenty-eight years later, in *Louisville & Nashville R. Co.* v. *Public Service Commission,* 249 F. Supp. 894 (M.D. Tenn. 1966), aff'd, 389 F.2d 247 (6th Cir. 1968), the United States District Court for the Middle District of Tennessee, after fully discussing *Browning*, held, based upon the facts in the record in the case before it, that discriminatory treatment of railroads was not permissible under Tennessee law. That decision was affirmed by the Sixth Circuit, after full consideration and discussion of *Browning*. Based upon the facts in this case and the reasoning contained in *Louisville & Nashville R. Co.* v. *Public Service Commission*, the decisions of the courts below are perfectly consistent with *Browning*.

III

The Decisions Below Gave Full Consideration To The Issues Presented And Decided Them Correctly.

In well-reasoned opinions both the district court and the United States Court of Appeals for the Sixth Circuit carefully considered the issues presented and correctly decided them. Both opinions are in accord with the prior decision of the Sixth Circuit in *Louisville & Nashville R. Co.* v. *Public Service Commission,* supra. The only issue actually presented by the petition is whether the Respondents were barred by 28 U.S.C. § 1341 from bringing their action in federal court. The petition simply restates the arguments made before the Sixth Circuit. Such argument of the merits does not represent any ground for granting certiorari. Therefore, the petition for certiorari should be denied.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the petition for a writ of certiorari should be denied.

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APPENDIX

APPENDIX A

United Inter-Mountain Telephone Co. is the wholly-owned subsidiary of United Telecommunications, Inc. The subsidiaries and affiliates of United Inter-Mountain Telephone Co. are:

United Telephone System, Inc.
United Data Services, Inc.
Unitel International, Inc.
Carolina Telephone and Telegraph Company
United Telephone Company of Florida
Florida Telephone Corporation
Winter Park Telephone Company
Quincy Telephone Company
Orange City Telephone Company
Winco Construction Corporation
Winpar Financial Corporation
United Telephone Company of Ohio
United Telephone Company of Indiana
North Supply Company
United Computing Systems, Inc.
Calma Company
On-Line Systems, Inc.
United Telephone Company of Missouri
United Telephone Company of Kansas
United Telephone Company of Minnesota
United Telephone Company of Iowa
United Telephone Company of Arkansas
United Telephone Company of the West
United Telephone Company of the Carolinas
United Telephone Company of the Northwest
Gulf States-United Telephone Company
Palo Pinto Telephone Company
United Telephone Company of Pennsylvania
New Jersey Telephone Company
United Telephone Company of New Jersey
West Jersey Telephone Company
Hillsborough and Montgomery Telephone Company

Saltillo Telephone Company
Florida Telephone Satellite, Inc.
Wintel Service Corporation

Concord Telephone Exchange, Inc. is the wholly-owned subsidiary of Telephone & Data Systems, Inc., Chicago, Illinois. The subsidiaries and affiliates of Concord Telephone Exchange, Inc. are as follows:

Amelia Telephone Corp.
Arcadia Telephone Co.
Asotin Telephone Co.
Augusta Telephone Co.
Badger State Telephone Co. Inc.
Barnardsville Telephone Co.
Black Earth Inc.
Boncuel Telephone Co.
Burlington-Brighton-Wheatland Telephone Co.
Calhoun City Telephone Co. Inc.
Central State Telephone Co.
Clayton Telephone Co.
Continental Telephone Co.
Dodge County Telephone Co.
Edwards Telephone Co. Inc.
Elnora Telephone Co. Inc.
Fennimore Telephone Co.
Greenwood Telephone Co. Inc.
Hartland-St. Albans Telephone Co.
Hendricks Telephone Corp.
Hickory Telephone Co.
Home Telephone Co. Inc.
Home Telephone Co.
Home Telephone of Pittsboro Inc.
Kearsarge Telephone Co.
McClellanville Telephone Co. Inc.
Meriden Telephone Co. Inc.
Mid-State Telephone Co.
Midway Telephone Co.

Mosel & Centerville Telephone Co.
Mt. Vernon Telephone Co.
Northfield Telephone Co.
Oklahoma Tele Communication Systems Inc.
Peoples Telephone Co. (Ala.)
Peoples Telephone Co. (Wis.)
Perkinsville Telephone Co. Inc.
St. Stephens Telephone Co.
Scandinavia Telephone Co.
Service Telephone Co. Inc.
Somerset Telephone Co.
Stockbridge & Sherwood Telephone Co. Inc.
Sugar Valley Telephone Co.
Troy Telephone Co. Inc.
Valders Telephone Co.
Waunakee Telephone Co. Inc.
West Penobscot Tel. & Telegraph Co.
Williston Tel. Co.
Tennessee Telephone Co.
Warren Telephone Co.
Ludlow Telephone Co.
Concord Cable Comm. Co.
Home Catv Inc.
Sevierville Cable Comm. Co.
TCC Inc.
Sevier County Cable Comm. Co.

Tennessee Telephone Company is the wholly-owned subsidiary of Telephone & Data Systems, Inc., Chicago, Illinois. The subsidiaries of Tennessee Telephone Company are:

Amelia Telephone Corp.
Arcadia Telephone Co.
Asotin Telephone Co.
Augusta Telephone Co.
Badger State Telephone Co. Inc.
Barnardsville Telephone Co.
Black Earth Inc.

Boncuel Telephone Co.
Burlington-Brighton-Wheatland Telephone Co.
Calhoun City Telephone Co. Inc.
Central State Telephone Co.
Clayton Telephone Co.
Continental Telephone Co.
Dodge County Telephone Co.
Edwards Telephone Co. Inc.
Elnora Telephone Co. Inc.
Fennimore Telephone Co.
Greenwood Telephone Co. Inc.
Hartland-St. Albans Telephone Co.
Hendricks Telephone Corp.
Hickory Telephone Co.
Home Telephone Co. Inc.
Home Telephone Co.
Home Telephone of Pittsboro Inc.
Kearsarge Telephone Co.
McClellanville Telephone Co. Inc.
Meriden Telephone Co. Inc.
Mid-State Telephone Co.
Midway Telephone Co.
Mosel & Centerville Telephone Co.
Mt. Vernon Telephone Co.
Northfield Telephone Co.
Oklahoma Tele Communications Systems Inc.
Peoples Telephone Co. (Ala.)
Peoples Telephone Co. (Wis.)
Perkinsville Telephone Co. Inc.
St. Stephens Telephone Co.
Scandinavia Telephone Co.
Service Telephone Co. Inc.
Somerset Telephone Co.
Stockbridge & Sherwood Telephone Co. Inc.
Sugar Valley Telephone Co.
Troy Telephone Co. Inc.
Valders Telephone Co.

Waunakee Telephone Co. Inc.
West Penobscot Telephone & Telegraph Co.
Williston Telephone Co.
Warren Telephone Co.
Ludlow Telephone Co.
Concord Cable Comm. Co.
Home Catv Inc.
Sevierville Cable Comm. Co.
TCC Inc.
Sevier County Cable Comm. Co.
Concord Telephone Exchange, Inc.

Powell Telephone Company is the wholly-owned subsidiary of Allied Telephone Co., Little Rock, Arkansas. The subsidiaries and affiliates of Powell Telephone Company are:

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Allied Telephone Co. of Missouri Inc.
Allied Telephone Co. of Oklahoma Inc.
Allied Utilities Corp.
Boone Co. Telephone Co.
Donithan Telephone Co.
Echo Telephone Co.
Nocona Telephone Co.
Oklahoma Allied Telephone Co.
Verona Telephone Co.
Wickes Telephone Co.
White River Telephone Co.
Southern Telephone Supply Co.

Claiborne Telephone Company is the wholly-owned subsidiary of Century Telephone Enterprises, Inc. The subsidiaries and affiliates of Claiborne Telephone Company are:

Butler Telephone Co.
Mustang Telephone Co.
Central Louisiana Telephone Co.
Central Telephone Co.
Carter County Telephone Co.

Avery Telephone Co.
Hooks Telephone Co.
Mountain Home Telephone Co.
Carnah Telephone Co.
Athens Telephone Co.
Home Telephone Co.
Liberty Telephone & Comm.
Liberty Telephone Co.
Mississippi Telephone & Comm.
Northwest Telephone Co.
Plain Dealing Telephone Co.
Century Telephone Co.
Union Telephone Co.
United Telephone Co.
Coastal Telephone & Elec.
Myrtle Telephone Co.
Evangaline Telephone Co.
Louisiana Western Telephone Co.
Wyannadote Telephone Co.
Cabboan Telephone Co.
Central Telephone Co. Mich.
Central Indiana Telephone Co.
Elbertfeld Telephone Co.
Hadley Telephone Co.
Au Gres Telephone Co.
Holway Telephone Co.

South Central Bell Telephone Company is a wholly-owned subsidiary of American Telephone and Telegraph Company. The subsidiaries and affiliates of South Central Bell Telephone Company are:

American Bell Incorporated
American Bell International, Incorporated
American Telephone and Telegraph Company of Arkansas
American Telephone and Telegraph Company of Baltimore City
American Telephone and Telegraph Company of Delaware

The American Telephone and Telegraph Company of Illinois
American Telephone and Telegraph Company of Indiana, Inc.
American Telephone and Telegraph Company of Michigan
American Telephone and Telegraph Company of New Jersey
The American Telegraph and Telephone Company of Pennsylvania
American Telephone and Telegraph Company of Rhode Island
American Telephone and Telegraph Company of Virginia
The American Telephone and Telegraph Company of Wisconsin
American Telephone and Telegraph Company of Wyoming
Bell Telephone Company of Nevada
The Bell Telephone Company of Pennsylvania
Bell Telephone Laboratories, Incorporated
195 Broadway Corporation
The Champaign Telephone Company
The Chesapeake and Potomac Telephone Company
The Chesapeake and Potomac Telephone Company of Maryland
The Chesapeake and Potomac Telephone Company of Virginia
The Chesapeake and Potomac Telephone Company of West Virginia
Cuban American Telephone and Telegraph Company
The Diamond State Telephone Company
East Pittsburgh Telephone Company
Eastern Telephone and Telegraph Company (Canada)
Empire City Subway Company (Limited)
Illinois Bell Telephone Company
Indiana Bell Telephone Company, Incorporated
Malheur Home Telephone Company
Manufacturers' Junction Railway Company
Michigan Bell Telephone Company

The Mountain States Telephone and Telegraph Company
Muberta Development Company
Nassau Recycle Corporation
New England Telephone and Telegraph Company
New Jersey Bell Telephone Company
New York Telephone Company
Northwestern Bell Telephone Company
The Ohio Bell Telephone Company
The Ohio Telephone and Telegraph Company
Pacific Northwest Bell Telephone Company
The Pacific Telephone and Telegraph Company
Sandia Corporation
Southern Bell Telephone and Telegraph Company
The Southern New England Telephone Company
Southwestern Bell Telephone Company
Southwestern Bell Telephone Company of Arkansas
Southwestern Bell Telephone Company (Oklahoma)
Teletype Corporation
Teletype International Sales Corporation
Texas Compensation Insurance Company
Transoceanic Cable Ship Company, Incorporated
Transoceanic Communications, Incorporated
Transpacific Communications, Incorporated
Western Electric Company, Incorporated
Western Electric Company, Limited (London)
Wisconsin Telephone Company

Illinois Central Gulf Railroad Company is the wholly-owned subsidiary of IC Industries Inc. The subsidiaries and affiliates of Illinois Central Gulf Railroad Company are:

Blue Island Railroad Company
Chicago Intermodal Company
CM&O Land Company
Gulf Transport Company
Kensington and Eastern Railroad Company (N/S)
New Orleans Great Northern Railway Company

South Chicago Railroad Company, The
Waterloo Railroad Company
Mississippi Valley Corpn.
Chicago & Illinois Western Railroad Company
IC Products Company
Chicago & Illinois Western Railroad Co.
Illinois Center Corporation
LaSalle Properties, Inc.
Philipsborn Equities, Inc.
South Properties, Inc.
H. F. Philipsborn & Co.
IC Industries Finance Corporation N.V.
Pet Incorporated
Pepsi-Cola Bottling of Kenosha & Racine
Pepsi-Cola General Bottlers, Inc.
Pepsi-Cola Kantor Bottling Inc.
Dad's Root Beer Company
Bubble Up Company, Inc.
Abex Corporation
Midas-International Corporation
Abex Industries Ltd.
Illinois Central Export Corporation
Abex International S.A.
Denison Hydraulics, Japan, Ltd.
Abex Industrial, S.A.
Amsco Mexicana, S.A.
Abex Mead, Limited
Abex Industries S.A.
Abex Fluid Power Limited
Abex GmbH
Abex A/S
Abex Industries Aktienbolag
Abex Ges.m.b.H.
Abex Finanziana S.r.L.
Abex Pagid Reibbelag GmbH
Abex Pagid Equipement S.A.
Abex International Holdings Limited

Abex Denison Limited
Danville Pepsi-Cola Bottling Company
Kolmar Products Corporation
Genadco Advertising Agency, Inc.
Pepsi-Cola Bottling Company of Cincinnati
Frolic Homes, Inc.
Huth Manufacturing Corporation
Indiana Trailer Supply, Inc.
International Parts (Canada) Limited
International Stamping Co., Inc.
Ken-Craft Products, Inc.
Midas Automotive Limited
Midas Realty Corporation
Midas Silencers Limited
Muffler Corporation of America
Muffler Corporation of Canada Limited
Norris Homes Incorporated
Societa Italiana per l'Amianto S.p.A.
Helvetia Redevelopment Corporation
Hussmann Refrigerator Co.
American Refrigeration Products, S.A.
Hussmann Refrigeration, Inc.
Hussmann Store Equipment Limited
Krack Corporation
Merchants Refrigerating Company
Merchants Refrigerating Company of California
Mountain Pass Canning Company
Nine-O-Five Stores, Inc.
St. Louis Lithographing Company
Southland Canning & Packing Co., Inc.
Stuckey's, Inc.
Stuckey's Stores, Inc.
Vendome Stores, Inc.
Spartanburg Dairy, Inc.
Applied Air Systems, Inc.
IC Industries Insurance Co. Ltd.
Abex Engineered Products Limited

Louisville and Nashville Railroad Company is a wholly-owned subsidiary of Seaboard Coast Line Railroad Company, which, in turn, is wholly-owned by CSX Corporation. Louisville and Nashville Railroad and Seaboard Coast Line Railroad jointly operate the properties of Respondent, Clinchfield Railroad Company, under a long-term lease. The following are subsidiaries and affiliates of Louisville and Nashville and Clinchfield Railroads:

Georgia Railroad
Atlanta and West Point Rail Road Company
The Western Railway of Alabama
The Carrollton Railroad Company
Chicago and Indianapolis Coal Company, Inc.
Cybernetics & Systems, Inc.
Evansville Connecting Railroad Company
Haysi Railroad Company
Houston-McCord Realty Company
Louisville, Henderson & St. Louis Railway Company
L&N Investment Corporation
Monon Coal Company, Inc.
Monon Realty Company, Inc.
Monon Transportation Corporation
Nashville and Decatur Railroad Company

Southern Railway Company is the parent of Cincinnati, New Orleans and Texas Pacific Railway Company and Alabama Great Southern Railroad Company. The subsidiaries (including wholly-owned subsidiaries) and affiliates of Southern Railway Company, are:

Central of Georgia Railroad Company
The Cincinnati, New Orleans and Texas Pacific Railway Company
Georgia Southern and Florida Railway Company
Norfolk Southern Railway Company
Atlantic and East Carolina Railway Company
Birmingham Terminal Company
Camp Lejeune Railroad Company
Chattanooga Station Company

The Georgia Northern Railway Company
Interstate Railroad Company
Live Oak, Perry and South Georgia Railway Company
Louisiana Southern Railway Company
New Orleans Terminal Company
St. Johns River Terminal Company
State University Railroad Company (54%)
Tennessee, Alabama & Georgia Railway Company
Tennessee Railway Company
Airforce Pipeline, Inc.
Arrowood-Southern Company
Arrowood Southern Executive Park, Inc.
The Atlanta and Charlotte Air Line Railway Company
Atlanta Terminal Company
Blue Ridge Railway Company
Charlotte-Southern Corporation
Chattanooga Terminal Railway Company
Citico Realty Company
Danville and Western Railway Company
Durham and South Carolina Railroad Company
Elberton Southern Railway Company
The Georgia Midland Railway Company
High Point, Randleman, Asheboro and Southern Railroad Company (86%)
Lenoir Car Works
Macon Terminal Company
Memphis and Charleston Railway Company
Mobile and Birmingham Railroad Company (78%)
The National Investment Company
Norfolk Southern Industrial Development Corp.
The North Carolina Midland Railroad Company (97%)
Ocean Steamship Company of Savannah
Southern Rail Terminals, Inc.
Southern Rail Terminals of Alabama, Inc.
Southern Rail Terminals of North Carolina, Inc.
Southern Railway—Carolina Division
Southern Region Coal Transport, Inc.

Southern Region Distribution Services, Inc.
Southern Region Industrial Realty, Inc.
Southern Region Investment Company
Southern Region Materials Supply, Inc.
Southern Region Motor Transport, Inc.
The South Western Rail Road Company (99.8%)
Terminal Properties, Inc.
Transylvania Railroad Company (97%)
Virginia and Southwestern Railway Company
Yadkin Railroad Company (74%)
Algers, Winslow and Western Railway Company
Arrowood Corporate Center Associates
Atlantic and North Carolina Railroad Company
Augusta and Summerville Railroad Company
Beaver Street Tower Company
Central Transfer Railway and Storage Company
Chatham Terminal Company
Chattanooga Choo-Choo Company
The Cincinnati Union Terminal Company
1575 Eye Street Associates
Fruit Growers Express Company
Kentucky & Indiana Terminal Railroad Company
Norfolk and Portsmouth Belt Line Railroad Company
The North Carolina Railroad Company
North Charleston Terminal Company
Pullman Company
Queen City Developers
Richmond, Fredericksburg and Potomac Railroad Company
Richmond-Washington Company
700 North Fairfax Street Limited Partnership
Terminal Railroad Association of St. Louis
Trailer Train Company
Woodstock & Blocton Railway Company

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